

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Bridging the Digital Divide for Low-Income) WC Docket No. 17-287
Consumers)
)
Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
)
Telecommunications Carriers Eligible for Universal) WC Docket No. 09-197
Service Support)

FIFTH REPORT AND ORDER, MEMORANDUM OPINION AND ORDER AND ORDER ON
RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Pai issuing a statement; Commissioners Rosenworcel and Starks
concurring in part, dissenting in part, and issuing separate statements.

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I. INTRODUCTION

1. The Commission’s Lifeline program plays a critical role in closing the digital divide for low-income Americans. Abuse of the program, however, continues to be a significant concern and undermines the Lifeline program’s integrity and effectiveness. Strengthening the accountability of the program is therefore essential to ensuring that it effectively and efficiently helps qualifying low-income Americans obtain the communications services they need to participate in the digital economy.

2. For years, the Commission has been taking steps to address waste, fraud, and abuse in the program, including through the establishment of a National Lifeline Eligibility Verifier. Today, we continue that work to strengthen the Lifeline program’s enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers. Specifically, we restore the states’ proper role in designating eligible telecommunications carriers (ETCs) to participate in the Lifeline program, clarify the obligations of participating carriers, and take targeted steps to improve compliance by Lifeline ETCs and reduce waste, fraud, and abuse in the program. We also clarify several of the program’s rules in response to petitions for reconsideration and requests for clarification. Further, we seek comment on appropriate program goals and metrics for a modernized Lifeline program and additional improvements to program integrity.

II. BACKGROUND

3. The Lifeline program was originally established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service.¹ Today, the Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service, as well as on bundled service, to ensure that all Americans can take advantage of the benefits that voice and broadband Internet access service bring, including being able to connect to jobs, family, education, health care providers, and emergency services.² Currently, qualifying low-income consumers receive a standard \$9.25 monthly discount on Lifeline-supported voice or broadband Internet access service or bundled service that satisfies the Commission’s minimum service standards, and those who reside on Tribal lands can receive up to a \$34.25 monthly discount on Lifeline service that satisfies the minimum service standards. Consumers can qualify for the Lifeline program by participating in a qualifying assistance program (i.e., Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit) or by having an income at or below 135% of the Federal Poverty Guidelines. Residents of Tribal lands³ can also qualify for the Lifeline program by meeting the aforementioned criteria or by participating in a qualifying Tribal-specific

¹ See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

² See 47 CFR § 54.400(n) (“Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.”).

³ See 47 CFR § 54.400(e) (defining Tribal lands for purposes of the Lifeline program).

federal assistance program.⁴ In 2018, Lifeline disbursements totaled approximately \$1.16 billion.⁵ As of October 1, 2019, approximately 7.35 million subscribers were participating in the Lifeline program.⁶

4. *Waste, Fraud, and Abuse in the Lifeline Program.* From the Lifeline program's creation through the mid-2000s, only facilities-based carriers could participate as ETCs, and total annual disbursements remained below \$1 billion. In 2005, the Commission authorized the first non-facilities-based wireless reseller to enter the program, by forbearing from the Communications Act's requirement that an ETC use its "own facilities" to provide service.⁷ The Commission subsequently granted conditional forbearance from the own-facilities requirement for several other carriers, and in 2012, it granted conditional forbearance from this requirement for all carriers seeking limited designation to participate in the Lifeline program (i.e., to participate as a Lifeline-only ETC that can receive support through the Lifeline program but not the High Cost program).⁸ The introduction of wireless resellers significantly increased the size of the Lifeline program,⁹ and many resellers offered free-to-the-consumer Lifeline services and free phone giveaways.¹⁰ Between 2009 and 2012, Lifeline enrollments and disbursements increased rapidly, and in 2012, annual Lifeline spending hit a high of \$2.2 billion.¹¹

⁴ See 47 CFR § 54.409(b) (listing the following qualifying Tribal specific federal assistance programs: Bureau of Indian Affairs general assistance, Tribally administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), and the Food Distribution Program on Indian Reservations).

⁵ See USAC 2018 Annual Report at 11, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2018/2018-Annual-Report.pdf>.

⁶ See USAC website, FCC Filings, Low Income 2019 Fourth Quarter Filings, LI08, Lifeline Subscribers By State or Jurisdiction--January 2019-June 2019, <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2019/fourth-quarter/low-income/LI08-Lifeline-Subscribers-by-State-or-Jurisdiction-January-2019-through-June-2019.xlsx> (last visited Nov. 12, 2019).

⁷ See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 CFR § 54.201(i)*, Order, 20 FCC Rcd 15095, 15095, 15098-99, 15105, paras. 1, 6, 25 (2005) (granting TracFone conditional forbearance from the facilities requirement under section 214 of the Act for purposes of participating in the Lifeline program and requiring TracFone to file a compliance plan for consideration in TracFone's ETC designation proceedings).

⁸ See generally *Virgin Mobile USA, LP Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, Order, 24 FCC Rcd 3381 (2009); *Federal-State Joint Board on Universal Service et al.*, Order, 25 FCC Rcd 8784 (2010) (granting conditional forbearance to i-wireless, LLC); *Telecommunications Carriers Eligible for Universal Service Support et al.*, Order, 25 FCC Rcd 10510 (2010) (granting conditional forbearance to Head Start Telecom, Inc., Consumer Cellular, Inc. and Line Up LLC); *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6813-17, paras. 368-81 (2012) (*2012 Lifeline Order*).

⁹ See, e.g., *Lifeline and Link Up Reform and Modernization et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2817, para. 143 (2011) (*2011 Lifeline Notice*) ("According to GAO's recent [2010] report, the low-income fund grew in 2009 primarily due to the emergence of pre-paid wireless, Lifeline-only ETCs.").

¹⁰ See, e.g., *2012 Lifeline Order*, 27 FCC Rcd at 6669-70, para. 23 ("Since 2005, a number of pre-paid wireless providers have become Lifeline-only ETCs, competing for low-income subscribers by marketing telephone service that provides a specified number of minutes at no charge to the consumer" and "Pre-paid wireless ETCs now account for more than 40 percent of all Lifeline support."). Consistent with longstanding policy, the Lifeline program does not fund the free phones that many resellers provide to Lifeline subscribers. See, e.g., *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4005-4006, para. 125 (2016) (*2016 Lifeline Order*) ("Past Commission precedent makes it clear that Lifeline, with the exception of a brief period after Hurricane Katrina, has been used to fund services, and not equipment. At this time, we see no reason to deviate from that approach.").

¹¹ *Universal Service Monitoring Report*, CC Docket No. 96-45 et al., at 22-23, Tables 2.1 and 2.2 (rel. May 31, 2019), <https://docs.fcc.gov/public/attachments/DOC-357769A1.pdf>.

5. Along with this reseller growth came reports of waste, fraud, and abuse. The enrollment of duplicate subscribers (e.g., a subscriber or household receiving more than one Lifeline service), non-existent subscribers, and claims for subscribers who were not using their Lifeline service are examples of wasteful or fraudulent practices that followed the rise of reseller participation in the program.¹² Notably, the Improper Payment Rate¹³ for the Lifeline Program is high (18.47%), making the program an outlier among USF programs.¹⁴

6. For example, in 2014, Wes Yui Chew, the sole owner of Oklahoma-based reseller Icon Telecom, Inc. (Icon), pleaded guilty to money laundering for transferring approximately \$20 million from an Icon account to his personal account—a transfer that occurred when he knew that Icon had received support for tens of thousands of customers that Icon did not actually serve.¹⁵ Icon separately pleaded guilty to making false statements by fabricating 58 Lifeline subscriber recertification forms in connection with a Universal Service Administrative Company (USAC) audit.¹⁶ That same year, Oscar Enrique Perez-Zumaeta, owner of PSPS Sales LLC, an entity that recruited low-income individuals to apply for Lifeline service through Icon, was charged with directing PSPS Sales workers to enroll fictitious customers for Icon and directing workers to falsify approximately 40,000 Lifeline recertification forms for use in Icon’s fraudulent scheme.¹⁷ Mr. Perez-Zumaeta pleaded guilty to money laundering for depositing approximately \$52,000 from Icon into a PSPS Sales bank account, despite knowing that more than \$10,000 of those funds was the result of criminal fraud against the Commission.¹⁸ The court ordered restitution of approximately \$15 million payable to the Commission, for which Icon, Mr. Chew, and Mr. Perez-Zumaeta were jointly and severally liable.¹⁹ As a result of these guilty pleas, the Commission’s

¹² See, e.g., *2011 Lifeline Notice*, 26 FCC Rcd at 2787-88, paras. 48-51 (discussing duplicate Lifeline subscribers); *2012 Lifeline Order*, 27 FCC Rcd at 6768, para. 255 (stating that ETCs offering pre-paid Lifeline service “do not charge for service on a monthly basis and do not have a regular billing relationship with the subscriber, or other similar relationship to track activity by the subscriber” and that “[a]s a result, some ETCs may seek and receive Lifeline support for a consumer who has abandoned the service, transferred the service to someone else, or failed to use the service at all”); CBS Denver, *Government’s Free Phone Program Riddled with Abuse, Fraud* (Nov. 6, 2014), <http://denver.cbslocal.com/2014/11/06/governments-free-phone-program-riddled-with-abuse-fraud/> (last visited Nov. 12, 2019) (discussing enrollments using fraudulent eligibility documentation).

¹³ For purposes of the Improper Payments Elimination and Recovery Improvement Act of 2012, an improper payment is defined as “any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements.” 31 U.S.C. § 3321 note (Section 2(g) of the Improper Payments Information Act of 2002).

¹⁴ Federal Communications Commission, *Fiscal Year 2018, Agency Financial Report*, at 85, Table 1 (2018), <https://www.fcc.gov/document/fcc-financial-report-fiscal-year-2018>.

¹⁵ See United States Attorney’s Office, Western District of Oklahoma, Press Release, *Icon Telecom and Its Owner Plead Guilty and Agree to Forfeit More Than \$27 Million in Connection With Federal Wireless Telephone Subsidy Program* (June 12, 2014), <https://www.justice.gov/usao-wdok/pr/icon-telecom-and-its-owner-plead-guilty-and-agree-forfeit-more-27-million-connection>.

¹⁶ See *id.*

¹⁷ See United States Attorney’s Office, Western District of Oklahoma, Press Release, *Icon Telecom, Its Owner, and a Former Associate Charged in \$25 Million Fraud in Federal Wireless Telephone Subsidy Program* (June 4, 2014), <https://www.justice.gov/usao-wdok/pr/icon-telecom-its-owner-and-former-associate-charged-25-million-fraud-federal-wireless>.

¹⁸ See United States Attorney’s Office, Western District of Oklahoma, Press Release, *Final Defendant Sentenced to Serve 42 Months in Prison for Money Laundering in Connection with Federal Wireless Telephone Program Subsidies* (Apr. 23, 2015), <http://www.justice.gov/usao-wdok/pr/final-defendant-sentenced-serve-42-months-prison-money-laundering-connection-federal>.

¹⁹ See, e.g., *U.S. v. Perez-Zumaeta*, Amended Judgment in a Criminal Case at 5, Case No. CR-14-165-001-D (W.D. OK Apr. 30, 2015).

Enforcement Bureau debarred Icon, Mr. Chew, and Mr. Perez-Zumaeta from participating in the Lifeline program for a period of three years.²⁰

7. In 2016, the Commission's Enforcement Bureau and the Office of Inspector General (OIG) investigated Total Call Mobile, Inc. (Total Call), finding that hundreds of Total Call field agents engaged in fraudulent practices to enroll Lifeline customers, including “us[ing] the same benefit program eligibility proof to enroll multiple consumers,” “slightly alter[ing] the way in which a subscriber’s demographic information was input to avoid having TCM identify the application as a duplicate,” “tamper[ing] with identification or program eligibility cards,” engaging in activities “to conceal the fact that the information on the documentation did not match the subscriber’s actual name or the other information on the Lifeline application,” and “submit[ing] false consumer addresses and social security numbers to enroll duplicate or otherwise ineligible subscribers.”²¹ Ultimately, Total Call entered into a Consent Decree with the Commission’s Enforcement Bureau that was part of a global settlement with the Department of Justice resolving a Federal False Claims Act complaint against Total Call, in which it agreed to a \$30 million settlement and relinquish its ETC designations, cease participating in the Lifeline program, and not seek to participate in the Lifeline program in the future.²²

8. Also in 2016, the Commission resolved an Enforcement Bureau investigation involving Lifeline reseller Blue Jay Wireless LLC’s claims for enhanced Lifeline support on Tribal lands in Hawaii—an investigation sparked by the Hawaii Public Utilities Commission’s discovery that the number of Tribal consumers Blue Jay was claiming in Hawaii appeared to exceed the number of households on Hawaiian Home Lands.²³ Blue Jay entered into a Consent Decree with the Commission’s Enforcement Bureau, in which Blue Jay admitted that from May 2014 through August 2014, it “certified on Form 497s that it obtained Tribal certifications from subscribers, including for subscribers who, after an inquiry by a staff employee of the Hawaii PUC, were later determined by Blue Jay to not reside on Hawaiian Home Lands.”²⁴ Blue Jay agreed to repay approximately \$1.7 million to the Fund, in addition to the approximately \$259,000 that Blue Jay had already repaid to the Fund.²⁵

9. In 2017, a Lifeline enrollment representative in Arkansas “pled guilty to conspiracy to commit wire fraud” and was ordered to pay restitution to the Commission for over \$200,000 for having enrolled “850-950 non-existent Lifeline customers in the program” from approximately December 2012 to April 2013, and having received commissions for those fake wireless Lifeline customer enrollments.²⁶

²⁰ See Letter from Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Wes Yui Chew, President Icon Telecom, 30 FCC Rcd 10939, 10940 (EB 2015) (Debarment Notice for Icon Telecom); Letter from Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Wes Yui Chew, President, Icon Telecom, 30 FCC Rcd 10211, 10212 (EB 2015) (Debarment Notice for Wes Yui Chew); Letter from Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Oscar Enrique Perez-Zumaeta, 30 FCC Rcd 10812, 10813 (EB 2015) (Debarment Notice for Oscar Enrique Perez-Zumaeta).

²¹ *Total Call Mobile, Inc.*, Order and Consent Decree, 31 FCC Rcd 13204, 13211-12, paras. 13 (a)-(e) (EB 2016) (*Total Call Mobile Consent Decree*); see also *Total Call Mobile, Inc.*, Notice of Apparent Liability, 31 FCC Rcd 4191, 4192, 4198-4205, 4211-12, paras. 3-4, 22-25, 30-43, 51, 74-77 (2016) (*Total Call Mobile NAL*).

²² See *Total Call Mobile Consent Decree*, 31 FCC Rcd 13204, 13214-15, paras. 27, 29.

²³ *Blue Jay Wireless, LLC*, Order and Consent Decree, 31 FCC Rcd 7603, 7603, paras. 1-2 (EB 2016) (*Blue Jay Consent Decree*).

²⁴ *Id.* at 7609, para. 18.

²⁵ *Id.* at 7603, 7612, paras. 4, 25.

²⁶ See Federal Communications Commission Office of Inspector General Semiannual Report to Congress, at 10 (Sept. 2017), https://transition.fcc.gov/oig/FCC_OIG_SAR_09302017.pdf.

As part of that scheme, the enrollment representative threw away or gave away the phones associated with the fake enrollments after they were activated and Lifeline service commenced.²⁷

10. In 2018, the Commission proposed a forfeiture of over \$63 million against wireless reseller American Broadband & Telecommunications Company (American Broadband) for apparently willfully and repeatedly engaging in misconduct from August 2016 through December 2016 that violated the Commission's Lifeline rules.²⁸ These apparent rule violations continued notwithstanding that in August 2016, American Broadband "made certain Admissions to the Commission and offered assurances that it had resolved all issues" that resulted in it receiving improper Lifeline reimbursements. After making these assurances, American Broadband apparently sought and received support for tens of thousands of Lifeline subscribers who were not actually eligible for support.²⁹ The NAL stated that American Broadband "(1) apparently created, then sought and obtained Lifeline support for ineligible or duplicate Lifeline accounts; (2) sought and obtained Lifeline support for deceased individuals; (3) repeatedly filed Forms 497 seeking Lifeline support, and obtained support for ineligible Lifeline accounts . . . even after it had represented to the Commission that it had identified and remediated all improper Lifeline claims; and (4) failed to de-enroll ineligible subscribers that it knew or should have known were ineligible to receive Lifeline support" including subscribers who should have been de-enrolled for non-usage or who transferred to another ETC.³⁰ In particular, specific enrollment master agents and subagents apparently created improper Lifeline enrollments by "manipulat[ing] names, dates of birth (DoB), and social security numbers (SSN)," "reus[ing] program eligible documents to enroll multiple individuals," "enroll[ing] deceased individuals," enrolling themselves into the program multiple times, and enrolling subscribers using invalid addresses (e.g., vacant lots or residences that could not support the associated numbers of subscribers).³¹

11. In April 2019, the FCC OIG released a public advisory concerning "pervasive, fraudulent practices that violate program rules and divert monies from the intended beneficiaries of the [Lifeline] program."³² According to OIG's advisory, "[f]raud remains a serious problem for the Lifeline program" and "[m]uch of the fraud found in the Lifeline program occurs during the subscriber enrollment

²⁷ See *id.*

²⁸ *American Broadband Notice of Apparent Liability for Forfeiture and Order*, 33 FCC Rcd 10308, 10309-10, paras. 1-3 (2018) (*American Broadband NAL*). The proposed forfeiture amount is separate from any amounts that American Broadband may owe to the Fund, and the NAL found American Broadband's owner jointly and severally liable for the proposed forfeiture amount and any reimbursement owed to the Fund because he apparently used the improper Lifeline support for his personal use. *Id.* at 10361-62, paras. 170-71. Respondents are provided an opportunity to respond to an NAL "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture." 47 CFR § 1.80(f)(3).

²⁹ *American Broadband NAL*, 33 FCC Rcd at 10354, para. 141; see also *id.* at 10329, para. 62 (from August 2016 through December 2016 "American Broadband apparently sought and received Lifeline support for thousands of duplicates"); *id.* at 10333, para. 78 ("from August 2016 through December 2016, American Broadband sought and received Lifeline support for thousands of claims involving deceased individuals"); *id.* at 10343, para. 109 ("from August 2016 through December 2016, [American Broadband] apparently sought support for two categories of ineligible non-usage subscribers, totaling more than fifteen hundred ineligible non-usage subscribers."); *id.* at 10350-51, para. 131 ("The Company apparently requested support for at least 22,081 ineligible customers [that should have been previously de-enrolled] on its Forms 497 for data months August 2016 and December 2016"); *id.* at 10358, para. 159 ("In reviewing the Company's Subscriber Lists for August 2016 through December 2016, the Company apparently sought and received support for more than 3,700 ineligible benefit transfer subscribers.").

³⁰ *Id.* at 10309, para. 2; see also *id.* at 10340-48, paras. 100-124.

³¹ *Id.* at 10324, 10326, 10330-31, paras. 43, 48, 71-72.

³² FCC Office of Inspector General, Advisory Regarding Fraud in the Lifeline Program at 1 (Apr. 16, 2019), <https://docs.fcc.gov/public/attachments/DOC-357035A1.pdf>.

process.”³³ OIG also explained that it “has observed many instances in which Lifeline carriers, agents, and consumers manipulate subscriber enrollment information, including subscriber names, addresses, and eligibility proof requirements to provide subscribers who may be eligible for one Lifeline phone with a second or third or fourth phone, or to provide a Lifeline phone to an altogether different, ineligible customer.”³⁴ In particular, OIG states that it has observed Lifeline providers and their agents adding middle initials, reversing first and last names, and adding generational suffixes to enroll duplicate subscribers; using vacant lots to enroll subscribers; using the address for a single family home to enroll “dozens and sometimes hundreds of Lifeline subscribers;” and enrolling consumers using documents from non-qualifying programs (e.g., Medicare, unemployment insurance programs, and health insurance programs not associated with Medicaid).³⁵

12. Broader reviews also suggest that waste, fraud, and abuse remain a serious problem in the Lifeline program. In 2017, the GAO released an audit report which identified several weaknesses in the Lifeline program, including oversight of ETC-conducted eligibility verification.³⁶ GAO was unable to confirm the eligibility of 36% (or approximately 1.2 million individuals) of the Lifeline subscribers in its review.³⁷ GAO’s analysis identified 6,378 individuals reported as deceased who were enrolled or recertified for the Lifeline program *after* the date of their death, 5,510 potential duplicate subscribers,³⁸ and 48 addresses associated with 500 or more Lifeline subscribers, with one address associated with 10,000 Lifeline subscribers.³⁹ The GAO report states that its analysis “show[s] that a potential annual subsidy amount of \$1.2 million could have resulted from potentially ineligible or fictitious individuals receiving Lifeline benefits if these individuals were not de-enrolled by USAC or Lifeline providers and the providers claimed reimbursement for these subscribers.”⁴⁰

³³ *Id.* at 1-2.

³⁴ *Id.* at 2.

³⁵ *See id.* at 2-4.

³⁶ *See generally* GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program, GAO-17-538 (2017) (2017 GAO Report). As part of its audit, GAO conducted data analysis and matching using the National Lifeline Accountability Database, the Social Security Death Master File, and qualifying programs’ eligibility databases. *See id.* at 3-4.

³⁷ *See id.* at 37-40.

³⁸ *See id.* at 43.

³⁹ *See id.* at 46-47. The GAO acknowledged that some of these addresses appear to be homeless shelters. *Id.* Commission rules limit Lifeline service to one benefit per household, as defined in section 54.400(h) of the FCC’s rules. *See* 47 CFR § 54.409(b). While certain locations, such as homeless shelters, may have numerous associated Lifeline subscribers who are members of separate economic households, there have been investigations of alleged misconduct surrounding Lifeline providers enrolling numerous Lifeline subscribers at addresses that could not support that number of subscribers. *See, e.g., American Broadband NAL*, 33 FCC Rcd at 10308, 10324, 10330-31, paras. 43, 71-72. Accordingly, locations with large numbers of subscribers, such as those identified by GAO, warrant further review to determine whether the location is capable of supporting the number of associated subscribers.

⁴⁰ 2017 GAO Report at 43. We disagree with a report filed with the Commission that argues that the 2017 GAO Report is not reliable evidence of ongoing waste, fraud, and abuse in the Lifeline program. *See* Letter from Susan M. Gately, S.M. Gately Consulting LLC, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 11-42 *et al.*, Attachment, Susan M. Gately and Helen E. Golding, An Analysis of the “Unconfirmed” and “Deceased” Subscriber Findings in the 2017 GAO Lifeline Report, at 2 (Gately Report) (filed Sept. 10, 2018). The Gately Report does not refute the fact that GAO identified individuals reported as deceased or duplicative Lifeline subscribers, nor that there are control weaknesses with respect to ETC-conducted enrollments and eligibility verifications of subscribers, nor does it demonstrate that a significant number of subscribers whose eligibility GAO was unable to confirm were in fact eligible. In fact, the FCC’s OIG found that a significant number of deceased individuals were enrolled after the date of their death, with several thousand still being actively claimed for reimbursement at the time of its analysis.

(continued....)

13. Later that year, the FCC’s OIG completed its own analysis and separately determined that (1) “since National Lifeline Accountability Database (NLAD) was implemented in 2014, at least 44,500 already-deceased individuals were enrolled in Lifeline and ETCs have received more than \$4.5M in reimbursements for services provided to these ‘subscribers,’” and (2) at the time of the OIG’s analysis, “nearly 4,000 such subscribers were being claimed by ETCs.”⁴¹ OIG further reported that its investigations concerning the enrollment of deceased subscribers are ongoing.

14. *Significant Commission Efforts to Curb Waste, Fraud, and Abuse in the Lifeline Program.* Since 2011, the Commission has taken multiple steps in an effort to curb waste, fraud, and abuse in the Lifeline program, including adopting rule changes and establishing the National Lifeline Eligibility Verifier (National Verifier).

15. In 2011, as an initial effort to address the large number of Lifeline subscribers that were then receiving multiple Lifeline services, the Commission issued the *Duplicative Payments Order*, which clarified that each eligible Lifeline consumer is entitled to only one Lifeline benefit.⁴² The *Duplicative Payments Order* also directed the Wireline Competition Bureau (Bureau) to work with USAC to implement a process to resolve duplicative claims.⁴³ Concurrent with the release of the *Duplicative Payments Order*, the Bureau released the *June 2011 Guidance Letter*, which outlined the process USAC would use to identify and resolve duplicative Lifeline subscribers and directed USAC to seek recovery for intracompany duplicates.⁴⁴ In 2011, USAC conducted in-depth data validations for 12 states consistent with the process set forth in the *June 2011 Guidance Letter* and identified 269,000 subscribers receiving Lifeline service from more than one ETC.⁴⁵

16. The following year, the Commission issued the *2012 Lifeline Order*, which comprehensively reformed the Lifeline Program, including adopting numerous measures to strengthen protections against waste, fraud, and abuse.⁴⁶ Building on its efforts to address duplicate subscribers, the Commission (1) established the NLAD to “both eliminate existing duplicate support and prevent duplicative support in the future,”⁴⁷ (2) directed USAC to continue the in-depth data validations to check for duplicates until the NLAD was operational,⁴⁸ (3) codified a rule limiting Lifeline support to a single discount per household, and (4) prescribed certain duties that ETCs and USAC should take to eliminate the submission to USAC of duplicative claims for support, emphasizing that each ETC must, prior to

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See supra para. 13. We further note that USAC’s program integrity reviews to address the GAO’s findings confirm that many of the individuals reported as deceased and potentially ineligible subscribers that GAO identified were still enrolled in early 2018.

⁴¹ Federal Communications Commission Office of Inspector General Semiannual Report to Congress, at 10 (OIG Mar. 31, 2018), https://transition.fcc.gov/oig/FCC_OIG_SAR_03312018.pdf (2018 OIG Report to Congress).

⁴² *See Lifeline and Link Up Reform and Modernization et al.*, Report and Order, 26 FCC Rcd 9022, 9022, 9027, paras. 1, 8 (2011) (*Duplicative Payments Order*) (amending section 54.401(a)(1) of the Commission’s rules to provide that “no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently”); *see also* 47 CFR § 54.401(a)(1) (2011).

⁴³ *See Duplicative Payments Order*, 26 FCC Rcd at 9027, 9029, paras. 13, 8; *see also* 47 CFR § 54.405(a) (2011).

⁴⁴ *See* Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, USAC, 26 FCC Rcd 8588, 8590, 8592 (WCB 2011) (*June 2011 Guidance Letter*).

⁴⁵ *See* Letter from Karen Majcher, Vice President, USAC High Cost and Low-Income Division, to Sharon Gillett, Chief, FCC Wireline Competition Bureau, WC Docket No. 11-42 et al., at 1 (filed Jan.10, 2012).

⁴⁶ *2012 Lifeline Order*, 27 FCC Rcd at 6734-85, paras. 179-299.

⁴⁷ *Id.* at 6734, para. 179.

⁴⁸ *See id.* at 6747, para. 211.

initiating Lifeline service to a consumer, search its own records to ensure that it is not already providing Lifeline-supported service to that consumer or another member of the consumer's household residing at the same address.⁴⁹ Based on the results of USAC's in-depth data validation reviews, between 2013 and 2014 the Enforcement Bureau issued NALs against 12 Lifeline providers, nearly all resellers, that apparently violated the prohibition against duplicative Lifeline service by claiming reimbursement for intra-company duplicates.⁵⁰ The NLAD was fully operational in March 2014 and eliminated more than 1 million existing duplicates in 2014 alone, and has prevented the enrollment of many more potential duplicates.⁵¹

17. The *2012 Lifeline Order* also took significant steps to address waste by establishing a non-usage rule, which required ETCs providing free-to-the-end-user Lifeline service to de-enroll subscribers who failed to use their service during the prescribed period.⁵² In addition, the *2012 Lifeline Order* adopted a requirement that USAC audit new ETCs within the first year those carriers begin receiving Lifeline support, and that Lifeline ETCs receiving Lifeline reimbursements of \$5 million or more in the aggregate on an annual basis hire an independent auditor to assess the ETC's compliance with the Lifeline program requirements.⁵³ The 2012 reforms reduced fraud, abuse, and wasteful spending in

⁴⁹ See *id.* at 6691, 6683, 6687, 6689, 6712, 6747-49, paras. 60, 69, 74, 78, 120, 210-16; see also *Wireline Competition Bureau Announces that the National Lifeline Accountability Database Will Begin Accepting Subscriber Data in December*, Public Notice, 28 FCC Rcd 14639 (WCB 2013) (reminding ETCs of their ongoing duty to use all of the information available to them to identify and eliminate intra-company duplicative support).

⁵⁰ See, e.g., *Cintex Wireless*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17124, 17127-128, paras. 9, 11 (2013); *Conexions LLC, d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15318, 15321-323, paras. 9-10, 13 (2013); *Budget Prepay Inc. d/b/a Budget Mobile*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2508, 2511-12, paras. 9, 11 (2014); *Icon Telecom Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14445, 14448, paras. 9, 11 (2013). We note that some of the NALs that were issued based on USAC's in-depth data validation reviews were settled via consent decrees in which the resellers did not admit to any wrongdoing. See, e.g., *Telrite Corporation d/b/a Life Wireless*, Order and Consent Decree, 32 FCC Rcd 10974, 10979-10980, para. 11 (2017); *Easy Telephone Services d/b/a Easy Wireless*, Order and Consent Decree, 32 FCC Rcd 10932, 10937-38, para. 11 (2017); *Global Connection Inc. of America d/b/a Stand Up Wireless*, Order and Consent Decree, 32 FCC Rcd 10946, 10951-52, para. 11 (2017); *i-Wireless LLC*, Order and Consent Decree, 32 FCC Rcd 10960, 10965-66, para. 11 (2017).

⁵¹ See Letter from Tom Wheeler, FCC Chairman, to Sen. David Vitter, at 2 (Dec. 29, 2014) <https://www.fcc.gov/document/chairman-wheeler-response-regarding-lifeline> ("Thus far, the NLAD has eliminated approximately 1.28 million duplicates, which will save the fund approximately \$161 million on an annualized basis."). For the period January 2013 through December 2013, USAC reported approximately 14.438 million Lifeline subscribers prior to the implementation of the NLAD. See USAC website, FCC Filings, Low-Income Second Quarter 2014, LI08 Lifeline Subscribers by State and Jurisdiction January through December 2013, <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2019/second-quarter/low-income/LI08-Lifeline-Subscribers-by-State-or-Jurisdiction-.xlsx> (last visited Nov. 12, 2019). For the period January 2015 through March 2015, following the implementation of the NLAD and scrubbing efforts, the number of Lifeline subscribers was approximately 11.9 million. See USAC website, FCC Filings, Low-Income Third Quarter 2015, LI08 Lifeline Subscribers by State and Jurisdiction January through March 2015, <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2015/third-quarter/low-income/LI08-Lifeline-Subscribers-by-State-or-Jurisdiction-January-2015-through-March-2015.xlsx> (last visited Nov. 12, 2019).

⁵² See *2012 Lifeline Order*, 27 FCC Rcd at 6768-71, paras. 257-63. From the initial effective date of the non-usage rule through December 1, 2016, the non-usage period was 60 days, and the cure period was 30 days. See 47 CFR § 54.407(c)(2) (2012).

⁵³ See *2012 Lifeline Order*, 27 FCC Rcd at 6781-82, paras. 288-91; see also 47 CFR § 54.420(a), (b).

the Lifeline program and “resulted in approximately \$2.75 billion in savings from 2012 to 2014 against what would have been spent in the absence of reform.”⁵⁴

18. The Commission’s *2015 Lifeline Order and Notice* took further steps to strengthen program integrity, including requiring ETCs to retain documentation demonstrating subscriber eligibility, and requiring ETCs to use the first of the month as the single uniform snapshot date for counting the number of Lifeline subscribers the carrier serves.⁵⁵ The *2015 Lifeline Order and Notice* also proposed increasing program integrity by shifting eligibility determinations from Lifeline providers to a trusted third party, and further reducing waste by shortening the non-usage period to 30 days and using the NLAD to calculate Lifeline providers’ monthly Lifeline reimbursement amounts.⁵⁶

19. The *2016 Lifeline Order* adopted many of the reforms proposed in the *2015 Lifeline Order and Notice*, the most significant of which was establishing a National Verifier to directly verify Lifeline applicants’ eligibility.⁵⁷ The *2016 Lifeline Order* also shortened the non-usage period and cure period that were adopted in the *2012 Lifeline Order* to 30 days and 15 days, respectively, and required that Lifeline reimbursement payments be made based off of data in the NLAD.⁵⁸

20. In addition to these significant reforms, the *2016 Lifeline Order* created the Lifeline Broadband Provider ETC category, which allowed an ETC to offer a single supported Lifeline service (broadband Internet access service) rather than both of the supported services (voice and broadband), and also preempted states from designating Lifeline Broadband Providers. The Commission expected that these actions would “unleash increased competition in the Lifeline marketplace, providing more choice and better service for the consumers benefitting from the program.”⁵⁹ However, these actions relied on novel interpretations of section 214 of the Act governing ETC designations and ETC service obligations.⁶⁰ The National Association of Regulatory Utility Commissioners (NARUC) and a coalition of states led by Wisconsin challenged these actions in court as unlawful.⁶¹ That litigation was subsequently remanded to the Commission for further consideration.⁶²

21. Following the 2017 GAO Report, the Commission directed USAC to implement additional safeguards to mitigate the risk of waste, fraud, and abuse in the program, including making changes to the NLAD and USAC’s administrative processes, and conducting program integrity reviews to address the GAO’s findings.⁶³ Chairman Pai instructed USAC to conduct a number of one-time and

⁵⁴ *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7821, para. 3 (2015) (*2015 Lifeline Order and Notice*).

⁵⁵ *Id.*, 30 FCC Rcd at 7891, 7898-99, paras. 224, 240-42.

⁵⁶ *Id.*, 30 FCC Rcd at 7845-53, 7879, 7884-85 paras. 63-91, 179, 198-99.

⁵⁷ See *2016 Lifeline Order*, 31 FCC Rcd at 4006-21, paras. 126-66.

⁵⁸ *Id.*, 31 FCC Rcd at 4014-15, 4115, paras. 143, 415. USAC began processing support claims based on the NLAD in February 2018 (for the January data month). See USAC, Lifeline Claims System, <https://www.usac.org/lifeline/reimbursement/lifeline-claims-system> (last visited Nov. 12, 2019).

⁵⁹ *2016 Lifeline Order*, 31 FCC Rcd at 4041, para. 220; see also *id.* at 4041, paras. 221-22.

⁶⁰ *Id.* at 4041-44, 4048-63, paras. 221-231, 239-273.

⁶¹ See Petition for Review, *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, Case No. 16-1170 (D.C. Cir. June 3, 2016); Petition for Review, *Wisconsin v. FCC*, Case No. 16-1219 (D.C. Cir. June 30, 2016).

⁶² See Order, *NARUC v. FCC*, Case Nos. 16-1170 and 16-1219 (D.C. Cir. Apr. 19, 2017) (granting the Commission’s motion for voluntary remand).

⁶³ See generally, Letter from Ajit Pai, Chairman, Federal Communications Commission, to Vickie Robinson, Acting CEO and General Counsel, USAC (July 11, 2017) (July 2017 Letter to USAC), <https://docs.fcc.gov/public/attachments/DOC-345729A1.pdf>.

periodic program reviews and to implement certain safeguards to remove ineligible subscribers from the Lifeline program.⁶⁴ Specifically, for the 1.2 million subscribers identified by GAO as being potentially ineligible, USAC directed ETCs to verify the eligibility of those subscribers who were still enrolled in the NLAD and to de-enroll those who could not be confirmed as eligible. Of this total, approximately 71% of subscribers identified by GAO were no longer enrolled at the time of USAC's eligibility review, and another 119,721 had to be de-enrolled because they could not or did not verify their continued eligibility. In addition, USAC was directed, over the course of a year, to review a monthly sample of subscribers enrolled or re-certified in the prior month by the 10 ETCs with the highest number of potentially ineligible subscribers, as found by the GAO.⁶⁵ USAC continues to review the eligibility of the subscribers sampled on a quarterly basis pursuant to the directive in the July 2017 letter.

22. USAC also continues to review statistically valid samples of addresses associated with 25 or more Lifeline subscribers and evaluate whether those addresses are capable of reasonably housing that many residents.⁶⁶ Subscribers who are unable to verify their residence at a potentially oversubscribed address or unable to confirm that they are independent economic households separate from other Lifeline subscribers at that same address must be de-enrolled. USAC was also directed to develop processes for identifying "ETCs with material discrepancies that cannot be explained between the NLAD and claimed support on their Form 497 submissions."⁶⁷ In August 2017, USAC implemented changes to its reimbursement system so ETCs could not claim more subscribers than they had enrolled in the NLAD, and in January 2018, USAC made further system changes that require ETCs to identify the specific subscribers in the NLAD for which they are claiming support.⁶⁸ USAC was also directed to de-enroll subscribers identified as deceased by GAO and, on an ongoing basis, USAC now checks every subscriber against the Social Security Death Master File upon enrollment and reviews a sample of recently recertified subscribers against the Social Security Death Master File on a quarterly basis.

23. Finally, USAC was instructed to undertake certain actions with respect to duplicates in the system and enrollment representative accountability.⁶⁹ USAC has confirmed that the duplicate accounts identified by GAO are no longer in the NLAD and therefore cannot be claimed for reimbursement, and USAC continues to develop and implement improvements to its duplicate detection methodology. Additionally, USAC is conducting forensic audits as requested by the leadership of the United States Senate Committee on Homeland Security and Governmental Affairs in 2017.⁷⁰

24. In the *2017 Lifeline Order and Notice*, to further build upon ongoing efforts to strengthen the integrity of the Lifeline program, the Commission proposed additional significant measures to curb waste, fraud, and abuse in the program. To reduce incentives for enrollment of ineligible subscribers, the Commission proposed and sought comment on prohibiting agent commissions related to enrolling

⁶⁴ See *id.* at 2.

⁶⁵ *Id.* at 1-2. USAC was directed to implement a series of safeguards intended to identify and de-enroll ineligible subscribers, customers claiming to reside at oversubscribed addresses, deceased subscribers, and duplicate subscribers. USAC was also instructed to develop a plan to identify ETCs that have claimed payment for more subscribers than are enrolled in NLAD and to require enrollment representatives to register with USAC. See *id.*

⁶⁶ See *id.* at 2-3.

⁶⁷ *Id.* at 2-3.

⁶⁸ See *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128, 128-29 (WCB 2018).

⁶⁹ See July 2017 Letter to USAC at 4.

⁷⁰ See Letter from Senator Ron Johnson, Chairman, and Senator Claire McCaskill, then Ranking Member, United States Senate Committee on Homeland Security and Governmental Affairs, to Ajit Pai, Chairman, FCC, and Vickie Robinson, CEO, USAC (Sept. 15, 2017), <https://ecfsapi.fcc.gov/file/1207201781657/17-755.pdf>.

subscribers in the Lifeline program.⁷¹ The Commission also proposed codifying the requirement that ETC Lifeline enrollment representatives register with USAC, which would improve the ability to monitor and stop potentially fraudulent or improper enrollments by enrollment representatives.⁷² In addition, the Commission sought comment on codifying the requirement that subscribers be compared to the Social Security Death Master File during the enrollment and recertification processes, proposed limiting the use of Independent Economic Household worksheets to situations where subscribers actually reside at the same address as another Lifeline subscriber, and proposed requiring documentation when a subscriber recertifies using a different program than they used to demonstrate their initial eligibility.⁷³ The Commission also proposed improvements to program audits, including shifting to a fully risk-based approach for biennial audits and other Lifeline program audits.⁷⁴ The Commission also sought comment on restoring states' traditional role in ETC designations and eliminating Lifeline Broadband Provider designations.⁷⁵

25. The Commission and USAC have made substantial progress in implementing the National Verifier, which, pursuant to the Commission's 2016 *Lifeline Order*, must be implemented in all states and territories by December 2019.⁷⁶ As of October 11, 2019, the National Verifier has launched in 47 states and territories as well as the District of Columbia.⁷⁷ Twenty-six states and territories as well as

⁷¹ See *Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10506, para. 91 (2017) (*2017 Lifeline Order and Notice*).

⁷² See *id.* at 10507, para. 92.

⁷³ See *id.* at 10508-509, paras. 97-98, 101.

⁷⁴ See *id.* at 10505, paras. 84-87.

⁷⁵ See *id.* at 10495-96, paras. 55-58 (proposing eliminating the federal Lifeline Broadband Provider ETC category and designation process and state preemption on which the federal Lifeline Broadband Provider ETC category was based).

⁷⁶ See *2016 Lifeline Order*, 31 FCC Rcd at 4020, para. 164.

⁷⁷ See *Wireline Competition Bureau Announces Full Launch of the National Lifeline Eligibility Verifier in Six States*, Public Notice, 33 FCC Rcd 6048, 6048 (WCB 2018) (announcing that the National Verifier would fully launch in Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming on November 2, 2018); *Wireline Competition Bureau Announces Full Launch of the National Lifeline Eligibility Verifier in Five States and One Territory*, Public Notice, 33 FCC Rcd 11796, 11796 (WCB 2018) (announcing that the National Verifier would fully launch in Guam, Hawaii, Idaho, New Hampshire, North Dakota, South Dakota on January 15, 2019); *Wireline Competition Bureau Announces the Next National Lifeline Eligibility Verifier Launches in Eight States, Three Territories and the District of Columbia*, Public Notice, 34 FCC Rcd 218, 219 (WCB 2019) (announcing that the National Verifier would fully launch in Missouri, North Carolina, Pennsylvania and Tennessee on March 5, 2019); *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier for All New Enrollments in Four States, Three Territories and the District of Columbia*, WC Docket No. 11-42, Public Notice, DA 19-260 (WCB Apr. 5, 2019) (announcing that the National Verifier would fully launch in Alaska, American Samoa, Delaware, the District of Columbia, Maine, the Northern Mariana Islands, Rhode Island, and the U.S. Virgin Islands on May 7, 2019); *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier for All New Enrollments in Three States*, WC Docket No. 11-42, Public Notice, DA 19-402 (WCB May 10, 2019) (announcing that the National Verifier would fully launch in Indiana, Kentucky, and Michigan on June 11, 2019); *Wireline Competition Bureau Announces the Next National Lifeline Eligibility Verifier Launch in Eleven States*, WC Docket No. 11-42, Public Notice DA 19-569 (WCB June 17, 2019) (announcing the soft launch of the National Verifier in Arizona, Connecticut, Georgia, Iowa, Kansas, Nebraska, Nevada, New York, Vermont, Virginia, and West Virginia); *Wireline Competition Bureau Announces the Next National Lifeline Eligibility Verifier Launch in Nine States and One Federal Territory*, WC Docket No. 11-42, Public Notice, DA 19-968 (WCB Sept. 26, 2019); see also USAC, *Lifeline National Verifier Plan*, WC Docket Nos. 11-42, 17-287, 09-197, and 10-90 (filed July 31, 2019). Work to implement the National Verifier in additional states and territories and to add other state database connections is ongoing.

the District of Columbia have fully launched, and 21 additional states have soft launched. Approximately 685,000 total Lifeline applications have been submitted through the National Verifier as of October 7, 2019, according to available USAC data. In the areas where the National Verifier has launched, existing Lifeline subscribers undergo reverification to confirm their identity and eligibility for the Lifeline program. To facilitate eligibility determinations and minimize the potential for waste, fraud, and abuse, USAC in coordination with the FCC has established automated connections with the Centers for Medicare and Medicaid Services, for Medicaid eligibility data, and with the U.S. Department of Housing and Urban Development, for Federal Public Housing Assistance data, to verify subscriber eligibility and has also established 13 automated connections between existing state databases and the National Verifier for purposes of verifying subscriber eligibility.⁷⁸ In addition to the significant work to implement the National Verifier, USAC has been developing a representative accountability database, which will enable it to issue a unique identifier that can be used to monitor and track the activities of ETC enrollment representatives in USAC's Lifeline systems.

III. FIFTH REPORT AND ORDER

26. In this Report and Order, we take significant steps to promote the integrity, effectiveness, and efficiency of the Lifeline program. First, we restore the traditional state role in designating ETCs and traditional ETC designation categories, while taking steps to increase transparency with states to improve oversight functions. We next amend the Lifeline program rules to improve the integrity of providers' enrollment and recertification processes, and we also establish protections to help prevent improper payment claims before they occur. Finally, we improve the Commission's rules regarding Lifeline auditing practices.⁷⁹

A. Respecting the States' Role in Program Administration

27. For the Lifeline program to be successful, the parties involved in its operations—from the Commission to the participating ETCs—must respect their particular roles and obligations under the law. To that end, in this Fifth Report and Order, we first restore the Commission's longstanding recognition of the states' primary role in the ETC designation process, as established in the Communications Act of 1934 as amended ("the Act"), and restore the traditional categories of ETC and ETC obligations consistent with section 214(e)(1)(A) of the Act.

1. Restoring States' Traditional and Lawful Role in ETC Designations

28. Congress made states—not the Commission—primarily responsible for designating ETCs. And States have vigorously exercised their oversight authority to combat waste, fraud, and abuse in the Lifeline program. In some cases, states have been the first to identify waste, fraud, and abuse by ETCs—the Hawaii Public Utilities Commission first identified the issues with Blue Jay's overclaims of Tribal subscribers,⁸⁰ and the Oklahoma Corporation Commission "first identified fraudulent funding requests from Icon Telecom."⁸¹ More recently, an apparent violation of the Commission's non-usage rule

⁷⁸ This includes 11 connections in states where the National Verifier has fully launched and two connections in states where the National Verifier has soft launched.

⁷⁹ We note that we do not, in this Fifth Report and Order, act on several of the issues on which the Commission sought comment in the *2017 Lifeline Order and Notice*. See *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10495-10520, paras. 53-132. Those issues that we do not resolve in this Order remain pending for further resolution by the Commission.

⁸⁰ See *supra* para. 8.

⁸¹ Letter from Steve Russell, Markwayne Mullin, Tom Cole, Jim Bridenstine, & Frank Lucas, Members of Congress, to the Honorable Tom Wheeler, Chairman, FCC, WC Docket Nos. 11-42, 09-197 (Mar. 25, 2016).

was initially uncovered by an investigation by the Oregon Public Utility Commission.⁸² States have also conducted further investigations of ETCs for which the FCC first identified compliance issues. For example, in 2013, following the consent decree resolving the Commission’s investigation of Lifeline reseller TerraCom regarding intracompany duplicate subscribers, the Indiana Utility Regulatory Commission conducted its own investigation of TerraCom and identified instances of waste and abuse.⁸³ States have also filtered out ineligible carriers by refusing designations to those with substandard services and weeded out bad actors by revoking designations for unlawful practices.⁸⁴ Most recently, in May 2019, the Illinois Commerce Commission (ICC) denied wireless reseller Q Link LLC’s request for a Lifeline-only ETC designation.⁸⁵ The ICC cited Q Link’s “inability to provide accurate, consistent and reliable information” as “reason enough for it to deny Q Link’s request for ETC designation,” and found that Q Link “failed to demonstrate it has the financial and technical capability to provide service in its requested service areas.”⁸⁶ States have also performed audits, addressed consumer complaints, and maintained valuable state matching programs.⁸⁷ In doing all this, states have brought to bear personnel and resources far greater than the Commission alone could offer.⁸⁸

29. By contrast, Congress cast the Commission in a supporting role. For its part, the Commission merely designates carriers where states are ill suited to do so—for example, where states lack jurisdiction,⁸⁹ or in unserved areas where no carrier is willing to provide USF services.⁹⁰ For the two decades since Congress passed the Telecommunications Act of 1996, this is how the Commission understood its role.

30. With the *2016 Lifeline Order*, the Commission departed from the parameters set by statutory text and longstanding practice. First, that order created a new type of ETC—the Lifeline Broadband Provider ETC. It then purported to preempt any state authority over this new ETC, demoting states from the job they had performed well.⁹¹ Finally, to fill the void it had created by preempting state authority, it adopted a view of the Commission’s role under section 214(e) that was expansive enough to

⁸² See FCC, *FCC Learns That Sprint Received Tens of Millions in Lifeline Subsidies—But Provided No Service*, Press Release (Sept. 24, 2019), <https://www.fcc.gov/document/sprint-received-lifeline-subsidies-885000-inactive-subscribers>.

⁸³ See Indiana Utility Regulatory Commission Comments at 1-2 (stating “[i]n fact, in 2013 the Indiana Commission opened an investigation and found instances of waste and abuse of the Lifeline Program regarding a non-facilities-based ETC and ordered necessary corrections to its procedures” and citing to Cause No. 44332); Indiana Regulatory Utility Commission, *Investigation of TerraCom Inc. and its Compliance With the Rules of this Commission*, Cause No. 44332 Order of the Commission (Apr. 17, 2013), https://www.in.gov/iurc/files/44332order_041713.pdf (commencing the Indiana Commission’s investigation of TerraCom after learning that “the FCC ordered TerraCom to repay the Lifeline Program \$416,000 plus interest for duplicative payments in Oklahoma”).

⁸⁴ See, e.g., NARUC Comments at 15.

⁸⁵ See generally Illinois Commerce Commission, *Q Link Wireless LLC, Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois*, 12-0095, Order (May 13, 2019), <https://www.icc.illinois.gov/docket/files.aspx?no=12-0095&docId=286156>.

⁸⁶ See *id.* at 66-67.

⁸⁷ See, e.g., NARUC Comments at 15.

⁸⁸ See Pennsylvania Public Utility Commission Reply Comments at 7 (“State commissions, like Pennsylvania, have the personnel, resources, and framework in place to provide a thorough review of ETC applications, as well as more oversight to the program and its operational efficiency, than is available at the FCC alone.”).

⁸⁹ See 47 U.S.C. § 214(e)(6).

⁹⁰ Here, the Commission’s role is limited to designation with respect to interstate services or where a state commission lacks jurisdiction. See 47 U.S.C. § 214(e)(3).

⁹¹ See *2016 Lifeline Order*, 31 FCC Rcd at 4040-68, paras. 217-89.

permit the Commission to exercise designation authority over Lifeline Broadband Provider ETCs. In this Fifth Report and Order, we find that the actions taken by the Commission in the *2016 Lifeline Order* were contrary to both statutory text and sound public policy. For the reasons explained below, we restore the lawful role of states in the ETC designation process.

31. *Section 214 and the 2016 Lifeline Order.* To obtain universal service funds for providing Lifeline service, a provider must be designated as an “eligible telecommunications carrier”—or “ETC”—under section 214(e) of the Act. Section 214(e)(1) of the Act establishes eligibility requirements for ETCs. These include that common carriers offer the services supported by the USF “support mechanisms” under section 254(c)—Lifeline is one of four such “mechanisms”—and that they advertise the availability of those services.⁹²

32. The next paragraph—214(e)(2)—orders state commissions to designate common carriers that meet these requirements as ETCs. In relevant part, section 214(e)(2) provides that “[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements [for eligibility in section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission.”⁹³ The general rule, in other words, is that state commissions are responsible for designating ETCs.

33. There are limited exceptions to this rule. Later provisions in section 214 address gaps in the ordinary designation process—areas where a state commission may be unable or ill-suited to exercise designation authority. The Commission’s limited role in designating ETCs falls within these gaps.

34. The first gap occurs where no common carrier is willing to provide supported services to all or part of an unserved community. In that case, section 214(e)(3) generally orders the Commission and states to (1) identify the common carriers best able to serve these communities and (2) require them to do so. The section divides responsibility for this task along jurisdictional lines: It orders state commissions to address the provision of *intrastate* services, and orders the Commission to address the provision of *interstate* services, as well as services in areas served by carriers outside of the jurisdiction of state commissions.⁹⁴

35. The second gap occurs where “a common carrier providing telephone exchange service and exchange access . . . is not subject to the jurisdiction of a State commission.”⁹⁵ This provision gives the Commission designation authority over, for example, wireless carriers operating in states lacking jurisdiction over such carriers and certain Tribal carriers.⁹⁶ Congress adopted section 214(e)(6) over a year after the passage of the Telecommunications Act to rectify the “oversight” that a handful of common

⁹² 47 U.S.C. § 214(e)(1).

⁹³ 47 U.S.C. § 214(e)(2).

⁹⁴ 47 U.S.C. § 214(e)(3).

⁹⁵ 47 U.S.C. § 214(e)(6).

⁹⁶ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (requiring carriers seeking designation under 214(e)(6) to provide “[a] certification and brief statement of supporting facts demonstrating that the petitioner ‘is not subject to the jurisdiction of a state commission’”); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265-67, paras. 115-122 (2000) (*Twelfth Report and Order*) (establishing a framework for resolving whether carriers seeking designation under section 214(e)(6) to serve Tribal lands are subject to state jurisdiction); see also *2015 Lifeline Order and Notice*, 30 FCC Rcd at 7863, 7882, paras. 122, 190 & nn.251, 363 (2015) (acknowledging that the Commission is responsible under section 214(e)(6) for designating wireless ETCs where the state does not have jurisdiction over wireless providers).

carriers might otherwise fall outside the jurisdiction of state commissions.⁹⁷ Without the fix of section 214(e)(6), that oversight would leave certain carriers—including most notably, Tribal carriers—wholly ineligible for universal service support. The legislative history confirms that the gap-filling section 214(e)(6) “w[ould] apply to only a limited number of carriers” and that it was not “intended to restrict or expand the existing jurisdiction of State commissions over any common carrier.”⁹⁸ The Commission itself recognized that Congress had not intended section 214(e)(6) to “alter the basic framework of section 214(e), which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2).”⁹⁹

36. That is the extent of the Commission’s role in designating ETCs. There is no suggestion in sections 214(e)(2), (3), or (6) that the Commission can supersede the states’ designation authority, or that the states’ designation authority is generally limited to specific services, such as intrastate services.¹⁰⁰ As we explain below, while section 214(e)(3) limits state authority to intrastate services *in unserved areas*, this specific jurisdictional limitation only highlights the absence of a general jurisdictional limitation on states’ authority.¹⁰¹ Instead, the text of section 214 makes clear that Congress gave primary authority for ETC designations to the states, and that the Commission’s role is merely to fill gaps in the ordinary designation process.

37. This is how the Commission read section 214 for nearly two decades—from the passage of the Telecommunications Act until the *2016 Lifeline Order*. In 2000, the Commission reviewed the text and legislative history of section 214(e) and concluded that “state commissions have primary responsibility for the designation of [ETCs] under section 214(e)(2).”¹⁰² In 2005, it affirmed this conclusion and again noted that section 214(e)(2) “provides state commissions with the primary responsibility for performing ETC designations.”¹⁰³ In 2011, the Commission again found that states have “primary jurisdiction to designate ETCs,” and that its role was to “designate[] ETCs where states lack jurisdiction.”¹⁰⁴ Even the *2015 Lifeline Order and Notice* recognized that “[s]ection 214(e)(2) assigns primary responsibility for designating ETCs to the states.”¹⁰⁵

⁹⁷ *Twelfth Report and Order*, 15 FCC Rcd at 12257, para. 98 & n.236 (discussing the legislative history of section 214(e)(6)); *see also* 143 Cong. Rec. H10807 (daily ed. Nov. 13, 1997) (statement of Rep. Bliley) (“The act . . . did not contemplate that certain carriers may fall outside the jurisdiction of a State commission.”).

⁹⁸ *See* 143 Cong. Rec. H10807, 10808 (daily ed. Nov. 13, 1997) (statement of Rep. Bliley) (“The Telecommunications Act of 1996 introduced a new requirement that State commissions determine which common carriers would be designated eligible for universal service funds. The act, however, did not contemplate that certain carriers may fall outside the jurisdiction of a State commission. . . . S. 1354 corrects this problem by permitting a common carrier that is not subject to State authority to be designated by the Federal Communications Commission as eligible to receive Federal universal service support.”).

⁹⁹ *Twelfth Report and Order*, 15 FCC Rcd at 12260, para. 104.

¹⁰⁰ *See id.* at 12262, para. 109 (“We believe that if Congress had intended to exempt particular services from the state commission designation process, it would have expressly done so in section 214(e).”).

¹⁰¹ Congress expressly chose to limit state authority to intrastate services only in unserved areas: “If no common carrier will provide [supported] services . . . to an unserved community . . . the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier . . .” 47 U.S.C. § 214(e)(3).

¹⁰² *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹⁰³ *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6374, para. 8 (2005).

¹⁰⁴ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17798, para. 390 & n.662 (2011).

¹⁰⁵ *2015 Lifeline Notice and Order*, 30 FCC Rcd 7863, para. 124 & n.254 (2015).

38. The *2016 Lifeline Order* abandoned this longstanding interpretation. That order created a new category of ETC, which offered only a single supported Lifeline service (broadband Internet access service) and was subject to the Commission’s (not states’) designation authority. Arriving at this unlikely outcome required standing section 214(e) on its head: First, the *2016 Lifeline Order* found that section 214(e)(1) authorized an ETC to offer only a single supported service rather than all services supported under the Lifeline program. This enabled the creation of the Lifeline Broadband Provider ETC. Next, despite the absence of any legal or factual conflict justifying preemption, the *2016 Lifeline Order* preempted state commissions from designating this new type of ETC. Then—in part by forbearing from a limit on the Commission’s own authority—the *2016 Lifeline Order* determined that the Commission had newfound authority to designate this new category of ETC under section 214(e)(6).¹⁰⁶

39. *Restoring Traditional Designation Roles and ETC Categories.* We eliminate the Lifeline Broadband Provider ETC category and restore the traditional state and federal roles in designating ETCs under the Act. We do this for two principal reasons. First, we conclude that the 2016 rules rested on a legally insupportable construction of section 214(e). Nothing in the *2016 Lifeline Order* or this record persuades us otherwise. Second, we conclude that the Lifeline Broadband Provider rules announced in the *2016 Order* did not serve the public interest. Instead, we conclude that the record in this proceeding demonstrates that the traditional designation framework and ETC categories better serve the Commission’s direction to efficiently and responsibly promote universal service. Tampering with this framework was not sound policy, nor did it appropriately balance the interest in promoting competition or encouraging new providers to participate in the program, while also guarding the program against further waste, fraud, and abuse.¹⁰⁷

40. We begin by concluding that the approach embodied in the *2016 Lifeline Order* was not supported by the statute. To explain this conclusion, we must retrace the long path that the *2016 Lifeline Order* took around the obstacle posed by the statutory text. In brief, the steps on this path were: (1) reinterpreting section 214(e)(1) to mean that ETCs need not offer all supported services;¹⁰⁸ (2) relying on this reinterpretation to establish Lifeline broadband support as a “separate element of the Lifeline program;”¹⁰⁹ (3) reinterpreting section 214(e)(6) to suggest that state commissions have no authority to designate ETCs with respect to supported interstate services;¹¹⁰ and (4) preempting states from designating ETCs for the separate element of Lifeline broadband support.¹¹¹ The *2016 Order* then filled the gap in designation authority it created by (5) reinterpreting out of existence the limit on FCC authority that an FCC-designated ETC must be a “common carrier providing telephone exchange service and exchange access”¹¹² and, (6) alternatively, forbearing from that same limit on the FCC’s authority.¹¹³ Each of these steps was unlawful; we discuss each in turn below.

41. *First*, ETCs must offer each of the Lifeline supported services designated by the Commission. Section 214(e)(1) requires that a “common carrier designated as an eligible telecommunications carrier” must, “throughout the service area for which the designation is received,”

¹⁰⁶ *2016 Lifeline Order*, 31 FCC Rcd at 4058-63, paras. 259-72.

¹⁰⁷ See, e.g., NARUC Comments at 14-18 (arguing that eliminating the Lifeline Broadband Provider designation procedure is good policy); but see, e.g., Free Press Comments at 15-16 (advocating for retaining Lifeline Broadband Provider designations).

¹⁰⁸ *2016 Lifeline Order*, 31 FCC Rcd at 4049-51, paras. 242-46.

¹⁰⁹ *Id.* at 4051, para. 248.

¹¹⁰ *Id.* at 4048-50, 4051 paras. 240-42, 247.

¹¹¹ *Id.* at 4052-55, paras. 249-255.

¹¹² *Id.* at 4058-60, paras. 261-265.

¹¹³ *Id.* at 4060-63, paras. 266-73.

“offer the services that are supported by Federal universal service support mechanisms” under section 254(c). The *2016 Lifeline Order* began by interpreting section 214(e)(1)(A) not to require an ETC to offer *all* supported services for the mechanism for which it was designated; instead, the *2016 Lifeline Order* concluded that the obligations in section 214(e)(1)(A) could be “tailored to match” an ETC designation.¹¹⁴ This tailoring would allow ETCs to obtain a designation to provide only one supported service, and to trim from their Lifeline offerings other services that the Commission has designated under the Lifeline mechanism.

42. The statute says otherwise. Again, section 214(e)(1)(A) requires an ETC to “offer . . . services” that are supported by a universal service “mechanism[.]”¹¹⁵ Lifeline—one of four such mechanisms under section 254(c)—supports both voice *and* broadband Internet access services.¹¹⁶ Participating in the Lifeline program without assuming any obligations with respect to voice service, then, conflicts with the requirement in section 214(e)(1) that ETCs “offer the *services* that are supported” by the Lifeline program.¹¹⁷ Forbearance—not interpretation—would have been the appropriate way for the Commission to refrain from enforcing what section 214(e)(1)(A) plainly requires.¹¹⁸ But the Commission did not use this mechanism here and, in any case, the conditions for forbearance were not met.¹¹⁹

¹¹⁴ *Id.* at 4049-51, paras. 242-46. We note that commenters who advocate for maintaining Lifeline Broadband Provider designations do not address the legality of the *2016 Lifeline Order*’s novel interpretation of the scope of ETC designations and service obligations. *See, e.g.*, Free Press Comments at 18-20; National Hispanic Media Coalition Comments at 11-16; New America’s Open Technology Institute Comments at 18-20.

¹¹⁵ 47 U.S.C. § 214(e)(1)(A).

¹¹⁶ *See* 47 CFR § 54.400(n) (“Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.”). The D.C. Circuit recently remanded to the Commission the task of addressing the inclusion of broadband support in the Lifeline program in connection with the Commission’s classification of broadband Internet access service as a Title I service. *See Mozilla Corp. v. FCC*, 940 F.3d 1, 69-70 (D.C. Cir. 2019) (*Mozilla*). Assuming the mandate issues without change in that part of the decision, the Commission will address that remand at a later time. For present purposes, what matters is that *Mozilla* in no way calls into question the obligation of an ETC to provide voice telephony—an obligation that the *2016 Lifeline Order* ignored in creating a category of Lifeline ETC without any voice service obligations.

¹¹⁷ Providing traditional ETCs support for providing Lifeline broadband-only service is distinguishable from the Lifeline Broadband Provider ETC category, which had no voice obligation. In contrast to the Lifeline Broadband Provider ETC category, traditional ETCs offering broadband-only Lifeline service are still subject to the voice obligation (except where they qualify for conditional voice forbearance) and must offer at least one Lifeline plan that includes voice service that meets the minimum service standards. NLAD data confirm that allowing traditional ETCs to receive support for broadband-only Lifeline service has not undermined the Commission’s designation of voice as a supported service for the Lifeline program. Based on NLAD data for the August 2019 snapshot date (captured September 1, 2019), only 0.15% of the approximately 6.5 million Lifeline subscribers in NLAD (which does not include Lifeline subscribers who reside in Oregon or Texas, or Lifeline subscribers who reside in California and receive Lifeline service that includes voice) are identified as receiving broadband-only Lifeline service.

¹¹⁸ Indeed, the *2016 Lifeline Order* did forbear from section 214(e)(1)(A)’s service requirement for certain supported services. *See, e.g.*, *2016 Lifeline Order*, 31 FCC Rcd at 4071, 4074, paras. 298, 311 (forbearing from “Lifeline-only ETCs’ obligations to offer [broadband Internet access service] to permit such ETCs to solely offer voice if they so choose” and forbearing from “requiring existing ETCs that are not Lifeline-only to offer Lifeline-supported [broadband Internet access service] in areas where they do not commercially offer such service or do not receive high-cost support.”). We note that commenters who support maintaining Lifeline Broadband Provider designations do not offer a legal basis for allowing that category of ETC to exist without a voice obligation. *See, e.g.*, Free Press Comments at 18-20 (advocating for maintaining Lifeline Broadband Provider designations); Public Knowledge Reply Comments at 1-7 (same).

¹¹⁹ Section 10 of the Act directs the Commission to forbear from applying any regulation or provision of the Communications Act to telecommunications carriers or telecommunications services if the Commission determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications

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Accordingly, we find that based on the language of section 214(e)(1)(A), the Lifeline program is a single, uniform support mechanism. ETCs therefore must offer *all* Lifeline supported services, unless the ETC qualifies for and avails itself of the forbearance granted in the *2016 Lifeline Order*,¹²⁰ which established limited forbearance from section 214(e)(1)'s service requirements, including (1) targeted forbearance from obligations to offer broadband Internet access service,¹²¹ and (2) conditional forbearance from existing non-Lifeline only ETCs' Lifeline voice obligations where several objective competitive criteria are met.¹²²

43. *Second*, and relatedly, it follows that Lifeline broadband Internet access service support is not a separate “element” of the Lifeline program. After concluding that section 214(e)(1) service obligations could be tailored to particular services, the *2016 Lifeline Order* deemed Lifeline broadband Internet access service support a “separate element of the Lifeline program.”¹²³ But again, section 214(e)(1) does not permit the *à la carte* designation of services; instead, it groups ETC service offerings by universal service *mechanism*.

44. The notion of separate, service-specific “elements” has no statutory basis. The *2016 Lifeline Order* patches together authority for this inventive approach by referring to sections 214(e)(3), 214(e)(1), 254(e), and the *2014 E-Rate Order*.¹²⁴ Standing alone, these authorities provide little support for the *2016 Lifeline Order*'s novel interpretation: The three statutory provisions respectively confer designation authority in unserved areas,¹²⁵ specify which carriers can receive universal service support,¹²⁶ and govern how that support can be used.¹²⁷ And they offer no more support for the notion of a universal

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service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a); *see also 2016 Lifeline Order*, 31 FCC Rcd at 4068, paras. 292-95 (explaining the forbearance standard). The *2016 Lifeline Order* did not conclude—nor are we now convinced—that broadly forbearing from the requirement in section 214(e)(1)(A) that an ETC must offer each of the Lifeline supported services designated by the Commission would satisfy these three elements (though the Commission did establish limited forbearance from these requirements).

¹²⁰ *See supra* n.118 (discussing the conditional forbearance from the obligation to offer Lifeline broadband Internet access service); *see also 2016 Lifeline Order*, 31 FCC Rcd at 4082-83, para. 335 (providing High-Cost/Lifeline ETCs conditional forbearance from the obligation to offer Lifeline voice in counties where the following three competitive conditions are met: “(a) 51 percent of Lifeline subscribers in a county are obtaining [broadband Internet access service]; (b) there are at least three other providers of Lifeline BIAS that each serve at least five percent of the Lifeline broadband subscribers in that county; and (c) the ETC does not actually receive federal high-cost universal service support”). This conditional forbearance did not apply to the ETC's existing Lifeline subscribers. *See 2016 Lifeline Order*, 31 FCC Rcd at 4087, para 345.

¹²¹ *See 2016 Lifeline Order*, 31 FCC Rcd at 4070-77, paras. 296-319.

¹²² *Id.* at 4078-93, paras. 324-60.

¹²³ *See id.* at 4049, 4051, paras. 242, 244, 248.

¹²⁴ *Id.* at 4049-51, paras. 242, 246-47.

¹²⁵ *See* 47 U.S.C. § 214(e)(3) (conferring designation authority for unserved areas).

¹²⁶ 47 U.S.C. § 214(e)(1) (“A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support...”).

¹²⁷ 47 U.S.C. § 254(e) (“A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”). Further, while the *2014 E-Rate Order* acknowledges that “we will ultimately reach a point where E-Rate no longer supports voice service” and states “nothing in section 254(c)(1) or elsewhere bars the Commission from establishing different supported services for different elements of the overall Universal Service Fund,” this language merely reflected section 254(c)(3)'s authorization of different supported services for the E-Rate program and does not change the scope of ETC designations for the Lifeline program or the service obligations for those ETCs. *See Modernizing the E-Rate*

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service “element” when read together. Accordingly, we conclude that the *2016 Lifeline Order’s* distinction underlying Lifeline Broadband Provider designations fails on its own terms.

45. *Third*, section 214(e)(6) does not suggest that state commissions lack the authority to designate ETCs with respect to supported interstate services. The *2016 Lifeline Order* found it ambiguous whether, for the Commission to have jurisdiction under section 214(e)(6), a carrier seeking ETC designation must be (1) *entirely* outside a state commission’s jurisdiction *or* (2) only outside a state commission’s jurisdiction *with respect to a particular service*, even if a state commission retains general jurisdiction over the carrier.¹²⁸ Seizing on this supposed ambiguity, the *2016 Order* held that section 214(e)(6) provided the Commission the authority to take over designations where a carrier provides only a service that is jurisdictionally interstate (for example, broadband Internet access service).¹²⁹

46. We see no such ambiguity.¹³⁰ First, the jurisdictional nature of a particular service that a carrier offers is irrelevant for the purposes of determining whether *the carrier itself* is “subject to the jurisdiction of a State commission.”¹³¹ And while section 214(e)(6) may not address the situation where specific *services* fall outside the jurisdiction of a state commission, there is a ready explanation for that silence: Section 214(e)(1) does not countenance the separate designation of specific interstate services. Sealing this conclusion is the fact that other provisions in section 214(e) plainly contemplate states designating ETCs that provide both interstate and intrastate services. The fact that Congress expressly limited states’ designation authority under section 214(e)(3) to intrastate services underscores that the states’ designation authority is not so limited under section 214(e)(2); if Congress had intended to limit states’ designation authority under 214(e)(2) to intrastate services, it would have expressly done so.

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Program for Schools and Libraries, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8897, para. 72 (2014). The *2014 E-Rate Order* also did not change ETCs’ statutory requirements under section 214(e)(1)(A). See NARUC Comments at 8 & n.23 (stating that the E-Rate precedent cited in the *2016 Lifeline Order* is “distinguishable on both the facts and the applicable provisions of the Act”).

¹²⁸ See *2016 Lifeline Order*, 31 FCC Rcd at 4048-51, paras. 240-42, 247.

¹²⁹ See *id.*; see also Free Press Comments at 13; National Hispanic Media Coalition Comments at 15-16; Public Knowledge Reply Comments at 3-4 (advocating for maintaining the preemption of state authority to designate Lifeline Broadband Providers in the *2016 Lifeline Order*).

¹³⁰ Even if the statutory language were ambiguous—and we find that it is not—we would still reach the same conclusion because the interpretation of the statutory language in this Fifth Report and Order better reflects Congress’s intent and would better serve the public interest. As we explain above, the overall structure of section 214 reflects Congress’s intent to grant states broad authority to designate ETCs. And as we explain below, there are strong policy reasons not to take a narrow view of state authority in the designation process, including, among other things, states’ experience in combating waste, fraud, and abuse in the Lifeline program.

¹³¹ 47 U.S.C. § 214(e)(6). Some commenters support the *2016 Lifeline Order’s* unlawful preemption of states’ designation authority for Lifeline Broadband Providers that are only obligated to provide Lifeline broadband Internet access service. See, e.g., Free Press Comments at 13; National Hispanic Media Coalition Comments at 15-16; Public Knowledge Reply Comments at 3-4. However, other commenters correctly argue that whether the state has jurisdiction as a matter of state law is the only relevant question for purposes of determining whether a state has designation authority under section 214(e)(2). See, e.g., NARUC Comments at 11 (“The nature or regulatory classification of the service does not matter. . . . The FCC simply has no role in the ETC designation process unless the State cannot act as a result of State law.”); Betty Ann Kane, Chairman, Public Service Commission of the District of Columbia Comments (in her individual capacity) at 2 (concurring with NARUC’s analysis); see also NASUCA Comments at 22; NARUC Reply Comments at 9-11, 14; Brief for Intervenor National Association of State Utility Consumer Advocates at 11, *NARUC v. FCC*, Case No. 16-1170 (D.C. Cir. Feb. 6, 2017), <http://www.nasuca.org/nwp/wp-content/uploads/2013/11/NASUCA-Intervenor-Brief-in-appeal-of-the-FCC’s-Broadband-Lifeline-Order-2-6-17.pdf> [hereinafter NASUCA Brief] (“The provision of services which cross state lines does not divest a state commission of its authority under Section 214(e)(2).”).

47. *Fourth*, the *2016 Lifeline Order*'s decision to preempt states from designating Lifeline Broadband Provider ETCs was unlawful. This preemption rested largely on the ground that allowing state commissions to designate those ETCs would hinder the goals of federal universal service and dampen broadband competition.¹³² We disagree with both justifications and find that this preemption analysis was otherwise flawed in several respects.

48. As an initial matter, no conflict with federal law justifies preemption. As the *2016 Lifeline Order* explains, "federal law preempts any conflicting state laws or regulatory actions that would prohibit a private party from complying with federal law or that 'stand[] as an obstacle to the accomplishment and execution' of federal objectives."¹³³ Here, while Congress established the goal of promoting broadband deployment in section 254(b), it also placed the primary responsibility for designating ETCs on state commissions in section 214(e)(2). Read together, these provisions establish that section 254(b) seeks to promote broadband deployment to the extent possible within the state-focused designation process set forth in section 214. Disregarding section 214(e)(2), the *2016 Lifeline Order* found a purported "conflict[]" between state designation of Lifeline Broadband Providers and the Commission's implementation of the goals of section 254(b).¹³⁴ But this "conflict" assumes, without explanation, that the relevant goal under section 254(b) is promoting broadband deployment in the abstract, unconstrained by the state-focused designation process mandated by section 214. We find that no such conflict exists, and that the principles listed in section 254(b) may not lawfully be construed in a manner that would ignore or override other statutory provisions, including the state-focused framework of section 214(e).

49. In addition, the *2016 Lifeline Order* wrongly relied on section 706 as authority for preemption.¹³⁵ Section 706, among other things, directs the Commission to focus its efforts on removing barriers to investment in "advanced telecommunications services."¹³⁶ The *2016 Lifeline Order* found that the burdens of obtaining separate designations from states ran afoul of this directive by posing "a barrier to investment and competition in the Lifeline marketplace."¹³⁷

50. This reasoning stumbles from the gate because section 706 does not furnish a basis for the preemption of states' designation authority. The Commission has previously concluded that the directives in section 706 to promote broadband deployment "are better interpreted as hortatory, and not as grants of regulatory authority."¹³⁸ But even if section 706 did confer regulatory authority, it would be

¹³² See *2016 Lifeline Order*, 31 FCC Rcd at 4052-55, paras. 249-55. Federal preemption of state law is rooted in the Supremacy Clause in Art. VI, cl. 2 of the U.S. Constitution.

¹³³ *Id.*, 31 FCC Rcd at 4053, para. 251 & n.672 (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995)).

¹³⁴ *Id.*, 31 FCC Rcd at 4052-53, paras. 249, 251. While the *2016 Lifeline Order* cited differences between state designation processes, and the burdens associated with seeking designations from multiple states to support preemption, these factors are equally true for non-Lifeline Broadband Provider ETCs that participate in the Lifeline program. See *id.* at 4052-53, para. 251. The need for non-Lifeline Broadband Provider ETCs to obtain state designations (where required) has not thwarted the universal service goals or resulted in a lack of competition in the Lifeline marketplace or lack of affordable broadband Internet access service for Lifeline consumers. Thus, the need to obtain designations from multiple states does not justify preemption of state designation authority.

¹³⁵ See *id.*, 31 FCC Rcd at 4054, paras. 253-54.

¹³⁶ See 47 U.S.C. § 1302(a).

¹³⁷ *2016 Lifeline Order*, 31 FCC Rcd at 4054, para. 254; *id.* at 4054, para. 253 ("We find that our preemption authority falls within these categories listed by Section 706(a), and the Commission therefore has authority to preempt state laws that conflict with section 706(a) by preventing market entry and competition in the Lifeline program.").

¹³⁸ *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 31 FCC Rcd 311, 470-72, paras. 268, 270-71 (2017) (*Restoring Internet Freedom Order*), *aff'd in relevant part*, *Mozilla*, 940 F.3d at 46. As we noted in the *Restoring Internet Freedom Order*, courts, including the D.C. Circuit in *Verizon v. FCC*, 740 F.3d 623,

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trumped by the more specific grants of authority in section 214(e). “[I]t is a commonplace of statutory construction that the specific governs the general.”¹³⁹ In contrast to sections 214(e)(2) and 214(e)(6), which expressly confer designation authority, section 706 merely directs the Commission and states to encourage the deployment of broadband services and generally instructs the Commission to take action to accelerate deployment if it finds advanced telecommunications capability is not being deployed in a reasonable and timely fashion.¹⁴⁰ The specific grant of designation authority to states prevails over section 706’s general language regarding broadband deployment.

51. Furthermore, as a practical matter, the preemption regime instituted by the *2016 Lifeline Order* created confusion and anomalies in the division of labor between the Commission and the states that the approach we adopt today avoids. The *2016 Lifeline Order* preempted states from designating Lifeline Broadband Providers, but left untouched states’ designation authority over traditional ETCs—who in some cases could effectively become Lifeline Broadband Provider ETCs without seeking FCC designation.¹⁴¹ The *2016 Lifeline Order* also suggests that states could oversee federally designated Lifeline Broadband Providers in their jurisdictions vis-à-vis consumer protection.¹⁴² In other words, the *2016 Lifeline Order* preempted state authority to designate Lifeline Broadband Provider ETCs, but left states with uncertain residual authority to oversee and impose conditions on Lifeline Broadband Provider ETCs. We find that the arbitrariness of this result is another reason for reversing the Commission’s preemption decision.

52. Conversely, we find that the state designation process furthers federal universal service goals—it does not “thwart” them.¹⁴³ As explained further below, the traditional state designation role better serves section 254(b)’s policy goals by facilitating thorough state reviews of carriers seeking ETC designations, as well as state monitoring of carriers who have received ETC designations.¹⁴⁴ This helps prevent, detect, and curb waste, fraud, and abuse in the program, which in turn promotes the efficient and

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636-642 (D.C. Cir. 2014), have concluded that the Commission could reasonably view section 706 as a grant of regulatory authority. *Id.* at 479, para. 281. But those cases also recognized that section 706 could likewise be read as hortatory, and thus left the Commission free to conclude as much in the *Restoring Internet Freedom Order*. *See, e.g., Verizon*, 740 F.3d at 637 (observing that section 706(a) “could certainly be read as simply setting forth a statement of congressional policy”).

¹³⁹ *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

¹⁴⁰ *See* 47 U.S.C. § 1302.

¹⁴¹ *See 2016 Lifeline Order*, 31 FCC Rcd at 4074, para. 310; *see also id.* at 4055-56, 4068, paras. 257, 288 (explaining that the Commission did not preempt states’ authority to “grant broader ETC designations that are not Lifeline-only and include support from the USF High-Cost Program” and that states could still require Lifeline Broadband Provider ETCs wishing to participate in both the federal and state-level Lifeline funds to “seek approval and (to the extent required by a state for receipt of state funding) ETC designation from the relevant state commission”); *id.* at 4079-93, paras. 326-60 (establishing conditional forbearance from existing non-Lifeline-only ETCs’ obligation to offer Lifeline voice service where certain competitive conditions are met).

¹⁴² *See id.* at 4057, para. 258 & n.697 (“This item provides the Commission the ability to designate LBPs, but does not preclude the states—who retain ETC designation and regulatory authority to the extent granted by state law—from overseeing the Lifeline providers in their jurisdiction” and “the authority retained by states to protect consumers notwithstanding the preemption in this Order mitigates any impact of preempting states from exercising authority to designate LBPs or revoke such designations.”); *see also* NASUCA Brief, *supra* n.131, at 13-14 (arguing that the Commission did not completely preempt state designation authority over service providers offering Lifeline broadband Internet access service).

¹⁴³ *See 2016 Lifeline Order*, 31 FCC Rcd at 4052, para. 249

¹⁴⁴ *See supra* paras. 57-60.

responsible use of limited program funds.¹⁴⁵ States' traditional designation role also encourages states to maintain their own support programs, furthering the universal service goals.¹⁴⁶

53. We note that our reversal of the preemption decision in the *2016 Lifeline Order* in no way conflicts with the Commission's determination in other contexts—such as in the *Restoring Internet Freedom Order*¹⁴⁷—that broadband Internet access service is jurisdictionally interstate and that inconsistent state and local regulation may be preempted on that ground. Several commenters argue otherwise, relying on the premise that states' ETC designation authority under section 214(e)(2) can be preempted simply because of the interstate nature of broadband Internet access service.¹⁴⁸ This argument ignores the fact that section 214 itself expressly confers on state commissions the primary responsibility to designate carriers that are subject to state jurisdiction. It also ignores—as explained above—the absence of a conflict justifying preemption. We therefore find no inconsistency between our reversal of the unlawful preemption in the *2016 Lifeline Order* and the Commission's preemption of inconsistent state and local regulation of broadband Internet access services in other contexts.¹⁴⁹

54. *Fifth*, the *2016 Lifeline Order* unlawfully expanded the Commission's designation authority under section 214(e)(6). Section 214(e)(6) gives the Commission designation authority only “in the case of a common carrier providing telephone exchange access service and exchange access that is not subject to the jurisdiction of a State commission.” The limit on the Commission's authority is clear: The Commission's designation authority under section 214(e)(6) is predicated, in part, on a common carrier “providing telephone exchange access service or exchange access.” Yet the *2016 Lifeline Order* interpreted this limit on the Commission's authority to mean (1) that the supported service need not be telephone exchange service or exchange access,¹⁵⁰ (2) that the carrier itself need not provide telephone exchange service or exchange access,¹⁵¹ (3) that the carrier need not have any facilities to provide telephone exchange service or exchange access,¹⁵² (4) that the carrier need not have any customers for telephone exchange service or exchange access,¹⁵³ and (5) that the carrier need not provide telephone

¹⁴⁵ See *id.*

¹⁴⁶ See NARUC Comments at 17.

¹⁴⁷ We note that the express preemption contained in the *Restoring Internet Freedom Order* has been vacated by the D.C. Circuit. See *Mozilla*, 940 F.3d at 18. Our discussion here, however, is intended solely to respond to commenters who incorrectly perceived an inconsistency between the approach the Commission adopted in the *Restoring Internet Freedom Order* and the Commission's interpretation here of section 214.

¹⁴⁸ See Public Knowledge Reply Comments at 3-4; National Hispanic Media Coalition Comments at 15-16. As examples, these commenters cite the language in the Commission's 2018 Declaratory Ruling, Report and Order, and Order in the *Restoring Internet Freedom* proceeding stating that “it is well-settled that Internet access is a jurisdictionally interstate service because a substantial portion of Internet traffic involves accessing interstate or foreign websites”, “broadband Internet access service is predominately interstate because a substantial amount of Internet traffic begins and ends across state lines” and “the Commission has legal authority to preempt inconsistent state and local regulation of broadband Internet access service.”). Public Knowledge Reply Comments at 3-4 (quoting from *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 429-30, paras. 197, 199 (2018)); see also National Hispanic Media Coalition Comments at 16 (quoting from same).

¹⁴⁹ See NARUC Reply Comments at 16 (“The FCC's purported ability to otherwise, in appropriate cases, preempt some aspects of State oversight of mixed services cannot translate into the ability to preempt Congress.”).

¹⁵⁰ *2016 Lifeline Order*, 31 FCC Rcd at 4058, para. 261.

¹⁵¹ *Id.* at 4058, para. 262.

¹⁵² *Id.* at 4058, para. 264.

¹⁵³ *Id.* at 4060, para. 263.

exchange service or exchange access for any length of time beyond when the carrier's ETC application is pending at the Commission.¹⁵⁴

55. The effect is to remove the phrase “providing telephone exchange access service and exchange access” from the statute. By emptying the word “providing” of all meaning, the Commission's interpretations violate the canon of statutory construction dictating that a statute should be interpreted in a manner that gives effect to each of its words and clauses.¹⁵⁵ If Congress intended for this provision to have the overly broad meaning that the Commission ascribed to it in the *2016 Lifeline Order*, Congress would have used more expansive language in section 214(e)(6). We therefore find that the *2016 Lifeline Order*'s interpretations of section 214(e)(6) unlawfully expanded the Commission's jurisdiction to designate ETCs.

56. *Sixth*, and finally, the *2016 Lifeline Order*'s alternative forbearance from section 214(e)(6)'s requirement that carriers be providing telephone exchange service and exchange access was improper.¹⁵⁶ Section 10 provides that the Commission may forbear from applying provisions of the Act to carriers and services—not that it can forbear from statutory limitations on its own authority.¹⁵⁷ To read section 10 otherwise would render statutory constraints on the Commission meaningless: Take, for example, the absurdity of the Commission forbearing from the limitations imposed by the phrase “interstate or foreign” in the Communications Act.¹⁵⁸ This would expand the Commission's authority to *all* telecommunications services, obliterating the jurisdictional divide established by Congress. Clearly, Congress did not intend the Commission to use forbearance to so aggrandize itself. Here, the qualifying language “providing telephone exchange service and exchange access” limits the category of carriers that the Commission may designate under section 214(e)(6). It therefore constrains the Commission's authority—not the authority of ETCs. Section 10 does not authorize the Commission to forbear from this limitation on its own authority.

57. *The Traditional ETC Designation Framework Best Promotes the Goals of the Lifeline Program*. In addition to lacking legal authority for the 2016 approach, we independently conclude that

¹⁵⁴ *Id.* at 4060, para. 265.

¹⁵⁵ See, e.g., *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (stating that under cardinal principles of statutory construction “[i]t is our duty to give effect, if possible, to every clause and word of a statute” and “[w]e are ‘thus reluctant to treat statutory terms as surplusage’ in any setting”) (internal brackets and citations omitted); *U.S. v. Palmer*, 854 F.3d 39, 48 (D.C. Cir. 2017) (stating Congressional statutes should be interpreted “in a way to avoid surplusage.”); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Order on Remand, 16 FCC Rcd 9751, 9761, para. 20 (2001) (“[A]s a matter of statutory interpretation, we are obligated to interpret statutory language in a manner that gives meaning to each word—if at all possible—over an interpretation that renders certain words superfluous.”).

¹⁵⁶ See *2016 Lifeline Order*, 31 FCC Rcd at 4061, paras. 267, 269 (concluding that “the practical impact of that provision in section 214(e)(6) persuades us that it imposes an obligation on carriers” and “grant[ing] certain forbearance from applying the provision of section 214(e)(6) requiring carriers to be providing telephone exchange service and exchange access”).

¹⁵⁷ See 47 U.S.C. § 160(a) (“[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets . . .”).

¹⁵⁸ See, e.g., 47 U.S.C. § 152(a) (“The provisions of this chapter shall apply to all *interstate and foreign* communication by wire or radio and all *interstate and foreign* transmission of energy by radio . . .” (emphases added)); *id.* § 201(a) (“It shall be the duty of every common carrier engaged in *interstate or foreign* communication by wire or radio . . .” (emphasis added)).

the goals of the Lifeline program are best served when states play the primary role in ETC designations.¹⁵⁹

58. The traditional framework also has the advantage of providing strong state and federal oversight of ETCs. The cooperative federalism that exists under the traditional framework provides states certainty with respect to their role in monitoring and enforcing the activities of ETCs.¹⁶⁰ This in turn encourages states to devote staff and resources to thoroughly reviewing ETC designation applications and policing ETCs, providing a stronger system for promoting the efficient use of universal service funds, protecting Lifeline consumers, and reducing waste, fraud, and abuse than if states did not serve these critical roles.¹⁶¹ States have a record of more than twenty years of sound performance in their statutory role and monitoring the ETCs they designate. As NARUC has noted, states have been “crucial” in “policing the federal fund to eliminate bad actors.”¹⁶² Many states have robust processes for analyzing ETC designation petitions, addressing concerns with Lifeline-supported services, ensuring that the ETCs they designate satisfy the Lifeline service and other requirements, and preventing and identifying waste, fraud, and abuse in the Lifeline program.¹⁶³ States’ traditional designation role has also encouraged the continuation of state matching programs.¹⁶⁴

¹⁵⁹ See *2012 Lifeline Order*, 27 FCC Rcd at 6670-80, paras. 24-50 (establishing three goals for the Lifeline Program: (1) ensuring the availability of voice service for low-income Americans; (2) ensuring the availability of broadband Internet access service for low income Americans; and (3) minimizing the contribution burden on consumers and businesses); *2016 Lifeline Order*, 31 FCC Rcd at 4112, para. 408 (adding affordability of voice and broadband Internet access service as a component of the first and second program goals).

¹⁶⁰ While the *2016 Lifeline Order* suggested that states retained the ability to exercise their consumer protection authority over LBPs, state commenters expressed uncertainty about their role with respect to monitoring and enforcing the activities of LBPs—uncertainty that does not exist under the traditional ETC designation framework. See *2016 Lifeline Order*, 31 FCC Rcd at 4057, para. 258 & n.697; e.g., Pennsylvania Public Utility Commission Reply Comments at 9 (explaining that in a 2016 petition, Pennsylvania PUC sought clarification regarding “the states’ roles in regulatory enforcement and consumer protections as they apply to LBPs”); Nebraska Public Service Commission Comments at 3 (explaining that for LBPs, “[t]he NPSC would not have jurisdiction to ensure consumers were appropriately receiving the Lifeline discount and that the supported services were actually being provided to only consumers that were qualified for Lifeline.”); Public Utility Division of the Oklahoma Corporation Commission Comments at 3 (explaining that by restoring the traditional framework, “the FCC and the states will understand their roles in monitoring and enforcing all ETCs”); see also NARUC Comments at 16 (“[S]eparating the ETC designation process from an entity’s ability to participate and receive federal Lifeline support [] undermine[s] the ability of States and the Commission to protect consumers for services supported by Section 254, as required by Section 254(i)” and that the traditional framework “makes it easier for the Commission to focus on complex interstate matters, knowing that the states can use their ETC designation authority to ensure adequate consumer protection for services supported under Section 254.” (quoting from Pennsylvania Public Utility Commission February 22, 2016 *ex parte*)).

¹⁶¹ See NARUC Comments at 14, 16, 17 (“If the State designation and oversight authority is diminished as per the *2016 Lifeline Order*’s alternate designation procedure, it undermines any State commission’s efforts to justify staff to either promote or protect users of such programs. There is no question that that is exactly what states do today.”; “Additional State ‘cops’ can only provide additional protections for both the program and program participants.”; “The *2016 Lifeline Order* allows a carrier to choose to take the State cops off the beat without providing any effective replacement. The FCC can never access sufficient resources to fill the resulting deficit.”); Pennsylvania Public Utility Commission Reply Comments at 8-9 (explaining that states “have the personnel, resources, and framework in place to provide a thorough review of ETC applications, as well as more oversight to the program and its operational efficiency, than is available at the FCC alone” and advocating for restoring the “cooperative federalism” that exists under the traditional ETC designation framework).

¹⁶² NARUC Comments at 15.

¹⁶³ See, e.g., NARUC Comments at 14-17; California Public Utilities Commission Comments at 6-7; Montana Public Service Commission Reply Comments at 2-3; Pennsylvania Public Utility Commission Reply Comments at

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59. By contrast, state commenters explain in the record that the stand-alone federal Lifeline Broadband Provider ETC category “complicates administration,”¹⁶⁵ “frustrates” state policies and procedures,¹⁶⁶ “undermine[s] state programs,”¹⁶⁷ and “adds an unnecessary layer of complexity to the ETC framework.”¹⁶⁸ State commenters also express concern that the Lifeline Broadband Provider ETC designation creates uncertainty with respect to states’ role in monitoring and enforcing ETC activities,¹⁶⁹ and engenders consumer confusion.¹⁷⁰

60. This burdensome creation cannot be justified on the grounds that it is necessary to promote competition, as some commenters maintain.¹⁷¹ To the contrary, the traditional state role has not resulted in a lack of competition in the Lifeline marketplace or lack of affordable broadband Internet access service for Lifeline consumers.¹⁷² The traditional designation roles and ETC categories better

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7-8; Indiana Utility Regulatory Commission Comments at 2-3; Missouri Public Service Commission Comments at 9; Nebraska Public Service Commission Comments at 2.

¹⁶⁴ See NARUC Comments at 17. Consistent with the statute, the Commission has long recognized that universal service is a federal-state partnership and has encouraged states to maintain their own support programs. See 47 U.S.C. § 254(b)(5); *2016 Lifeline Order*, 31 FCC Rcd at 4068, para. 287 (applauding state lifeline programs); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8964, para. 353 (1997).

¹⁶⁵ See NASUCA Reply Comments at 6 (“[T]he concept of a federal-only LBP complicates administration of some state programs.”).

¹⁶⁶ See Nebraska Public Service Commission Comments at 4 (stating that the Lifeline Broadband Provider framework “would frustrate a number of policies and procedures the NPSC implemented in order to minimize the opportunity for fraud and abuse of the program”).

¹⁶⁷ See NARUC Comments at 18 (stating that leaving the Lifeline Broadband Provider designation process intact would “undermine State programs”).

¹⁶⁸ See Indiana Utility Regulatory Commission Reply Comments at 4 (stating “the Indiana Commission does not believe adding the LBP designation helps further the goals of the Lifeline program or broadband deployment” and “adds an unnecessary layer of complexity to the ETC framework”).

¹⁶⁹ See, e.g., Public Utility Division of the Oklahoma Corporation Commission Comments at 3 (supporting elimination of the separate Lifeline Broadband Provider ETC category and stating that by eliminating the Lifeline Broadband Provider designation process and returning to the traditional process “the FCC and the states will understand their roles in monitoring and enforcing the activities of all ETCs”); California Public Utility Commission Comments at 7 (stating that reversing the preemption of states’ primary designation authority with respect to Lifeline Broadband Provider ETCs would “resolve inconsistencies between state and federal efforts, and would provide benefits to the operations of state and federal programs”).

¹⁷⁰ See NARUC Comments at 13 (stating that maintaining a separate Lifeline Broadband Provider category “is unnecessarily complicated, will increase consumer confusion, and will undermine program goals”); Pennsylvania Public Utility Commission Reply Comments at 9 (“The LBP designation appears structured to allow carriers to participate in the Lifeline program without assuming voice service obligations. The Pa. PUC does not believe that result is consistent with federal law or consumer expectations.”).

¹⁷¹ These commenters generally argue that the Commission should maintain federal Lifeline Broadband Provider ETC designations to promote competition, innovation, and Lifeline consumer choice. See, e.g., Public Knowledge Reply Comments at 1-4; National Digital Inclusion Alliance Comments at 1-2; Free Press Comments at 4-5, 12-15, 18-19; City of New York Comments at 2-3; New America’s Open Technology Institute Reply Comments at 9-10; National Hispanic Media Coalition Comments at 11-13; Everyone On Comments at 2; Mobile Beacon Comments at 2-3.

¹⁷² See, e.g., TracFone Wireless Inc. Comments at 3, 47 (referencing the “vigorous competition among Lifeline service providers”); CTIA Comments at 2, 12 (“[W]ireless has brought robust innovation and effective competition to the Lifeline program . . .”). For 2018, ETCs requested approximately \$830 million for Lifeline services that ETCs reported as satisfying the Lifeline broadband minimum service standards. See USAC 2018 Annual Report at

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allow the Commission and states to appropriately balance the interest in encouraging more providers to participate in the Lifeline program and promote competitive broadband options, innovation, and choice for Lifeline consumers, while also guarding the program against further waste, fraud, and abuse.¹⁷³ Existing ETCs continue to participate in the Lifeline program based on their traditional state designations and in some cases have expanded their Lifeline offerings to new states, and new providers continue to receive traditional state ETC designations, permitting them to participate in the Lifeline program. As of October 1, 2019, for the September data month, NLAD data indicates that approximately 355 unique holding companies claimed Lifeline support for providing approximately 3.8 million Lifeline subscribers with Lifeline-supported broadband Internet access service that meets the Commission’s minimum service standards.¹⁷⁴

61. *Other Considerations.* Importantly, our elimination of Lifeline Broadband Provider designations does not preclude new providers from entering the Lifeline program or prevent Lifeline subscribers from receiving Lifeline discounts for qualifying broadband Internet access service under current rules.¹⁷⁵ Providers interested in participating in the Lifeline program remain able to obtain ETC status through existing state designation processes or from the Commission where the Commission has designation authority under section 214(e)(6). Further, Lifeline customers are able to receive discounts on Lifeline service offerings that include broadband Internet access service.¹⁷⁶ We also clarify that while section 254(e) authorizes the Commission to provide Lifeline reimbursements only to ETCs, the statute and Lifeline program rules do not preclude ETCs from offering broadband Internet access service satisfying the Lifeline minimum service standards through affiliated broadband Internet access service providers that operate under the ETC’s existing designation.¹⁷⁷ However, we make clear that where ETCs

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6, Table: Total Authorized Support by Service Category, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2018/2018-Annual-Report.pdf>.

¹⁷³ See Public Utility Division of the Oklahoma Corporation Commission Comments at 2-3 (explaining that “PUD believes that a return to the traditional and lawful process where states take the primary role in designating . . . (‘ETCs’), will still allow the appropriate introduction of new ETCs” and the fact that broadband Internet access service already exists in the marketplace is prima facie evidence that “states’ existing ETC designation processes should be relied upon to marshal in any new, qualified entities that are interested in providing services supported by the Lifeline program”); NARUC Comments at 14 (explaining that restoring state’s traditional role in ETC designations is “on its face, the best option for maximizing oversight of program integrity and efficiency” and that restoring states’ traditional roles “can only result in less fraud and abuse”); Pennsylvania Public Utility Commission Comments at 7 (“[R]e-establishing the role of state commissions in ETC designations will better ensure the integrity of the Lifeline program and likely result in less waste, fraud, and abuse.”).

¹⁷⁴ This data does not include Lifeline subscribers in Texas and Oregon, or Lifeline subscribers in California who receive Lifeline service that includes voice.

¹⁷⁵ As noted above, the Commission will, should the decision become final, address at a later time the issue remanded in *Mozilla*—namely, the effect of the Commission’s classification of broadband as a Title I service on broadband support under the Lifeline program. Even if that inquiry should result in changes to the Commission’s approach to broadband support under Lifeline, however, we would still conclude that the legal and policy rationales outlined above support the removal of the Lifeline Broadband Provider ETC category. Indeed, if anything, the Commission’s classification of broadband under Title I supports the elimination of an ETC category for providers who seek that designation exclusively to offer Title I information services.

¹⁷⁶ See, e.g., Public Utility Division of the Oklahoma Corporation Commission Comments at 2 (stating that broadband Internet access service “already exists in the marketplace without any provider holding a designation as an LBP ETC”); see also, e.g., *supra* n.172.

¹⁷⁷ See 2016 *Lifeline* Order, 31 FCC Rcd at 4058-59, para. 262 (explaining that under the Commission’s interpretation of section 214(e)(1), “the ‘requirement that an ETC offer the supported services through “its own facilities or a combination of its own facilities and resale of another carrier’s service” would be satisfied when service is provided by any affiliate within the holding company structure”).

offer qualifying broadband Internet access service to Lifeline subscribers through such affiliated entities, only the ETC is eligible to receive reimbursement from the Lifeline program, and the ETC remains legally responsible for ensuring compliance with the requirements and obligations for ETCs in the statute and in our rules, as well as all Lifeline program rules and reporting requirements.¹⁷⁸

62. *Conclusion.* In the *2016 Lifeline Order*, the Commission interfered with a process that has functioned smoothly for over twenty years, without a compelling reason, and without the proper authority to do so. For over twenty years, state commissions have performed well in their statutory role of designating ETCs. We find that there was no policy basis to depart from the framework established by Congress, and that, in any case, the Commission lacked the authority to do so. For these reasons, the Commission here concludes that the approach in the *2016 Lifeline Order* is foreclosed by the plain text of section 214 and hence was contrary to law. Moreover, to the extent that the statute is ambiguous, the Commission believes that the reading of section 214 endorsed in this *Fifth Report and Order* far better comports with the Act's language, structure, and policy objectives, for the reasons stated herein, and is thus at minimum a reasonable exercise of the discretion delegated by Congress.

63. Consistent with the actions we take above to restore states' traditional ETC designation role, we eliminate section 54.201(j) of our rules, which precluded states from designating Lifeline Broadband Providers.¹⁷⁹ This rule change shall take effect 30 days after publication of this Fifth Report and Order in the Federal Register. In addition, because we have eliminated Lifeline Broadband Provider designations, we eliminate sections 54.202(d)(1-3), 54.202(e), and 54.205(c) of our rules.¹⁸⁰ We find that there is no need for a transition period before these rule changes take effect because, currently, no provider has a federal Lifeline Broadband Provider designation.¹⁸¹ These rule changes shall take effect 30 days after publication of this Fifth Report and Order in the Federal Register.

2. Increased Transparency with States to Improve Program Oversight

64. We next direct USAC to take a number of measures intended to increase the transparency of the Lifeline program and support enforcement against program non-compliance. In the *2017 Lifeline Order and Notice*, the Commission sought comment on the types of reports USAC should make available to states and information that should be shared with the relevant state agencies to increase transparency and accountability within the Lifeline program.¹⁸² State agencies support the proposal that USAC notify the Commission and state agencies of suspicious ETC activity within the Lifeline program¹⁸³ and

¹⁷⁸ See 47 U.S.C. § 254(e); 47 CFR §§ 54.400 *et seq.*

¹⁷⁹ *2016 Lifeline Order*, 31 FCC Rcd at 4052, 4055, 4127, paras. 249, 256 & n.664 and Appendix A Final Rules.

¹⁸⁰ *Id.* at 4066-67, 4126-27, paras. 280-81, 283 and Appendix A Final Rules.

¹⁸¹ See FCC website, Lifeline Broadband Provider Petitions and Public Comment Periods, <https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods> (last visited July 29, 2019).

¹⁸² *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10510, paras. 102-103.

¹⁸³ Florida PSC Comments at 7; Public Utility Division of the Oklahoma Corporation Commission Comments at 14-15 (noting that this reporting from USAC would “further facilitate the sharing of information and comparing of notes among agencies with the common goal of minimizing waste, fraud and abuse”); Michigan PSC Comments at 11 (noting that if USAC is aware of bad actors operating in the states, USAC should share that information with the relevant states); Missouri Public Service Commission Comments at 10 (noting that USAC has responded to the state's requests for information in the past and that a cooperative approach should be encouraged); NARUC Comments at 23-24 (stating that “[s]tate access to USAC reports and resources can only improve State oversight capability”).

encouraged further data sharing as an additional means for weeding out waste, fraud, and abuse in the Lifeline program.¹⁸⁴

65. In light of this support, we direct USAC to compile and make available on its website program aggregate subscribership data, including data broken out at the county level and by service type. USAC shall compile and present the data in a way that will be most clear to the states and the public. USAC already makes program statistics and other information available on its website.¹⁸⁵ Making this additional subscribership data available increases program transparency and continues to promote accountability in the Lifeline program.¹⁸⁶ Better insight into the program also will provide states with another tool in detecting anomalies that might indicate wasteful and fraudulent activity in the Lifeline program.

66. We also agree with state commenters that sharing information regarding trends related to eligibility check failures, for example, will enable states to recognize compliance issues and act appropriately. The states play an important role in identifying and stopping wasteful and fraudulent activity in the Lifeline program, and we find that it is essential to the integrity of the program that evidence of suspicious activity is shared with the appropriate state officials. Therefore, we instruct USAC to develop a process by which it will share with the Commission staff, the Commission's OIG, and relevant state agencies' information regarding suspicious activity. To further the sharing of information regarding such activity, USAC should work with state personnel to identify appropriate state officials who should have access to these reports.¹⁸⁷ USAC is instructed to make suspicious reports and trends available upon request from the state officials, and USAC is cautioned to ensure that the sharing of data, which could potentially contain sensitive information, complies with the Privacy Act and any other restrictions.¹⁸⁸ The record is clear that the states value this information, and we encourage the states to use the data provided in a way that furthers the integrity of the Lifeline program.

B. Improving Program Integrity in Program Enrollment and Recertification

67. We next turn to improving the Lifeline program's enrollment and recertification procedures to prevent waste, fraud, and abuse in the program. First, we establish new rules and limitations on ETCs' use of enrollment representatives to remove incentives to commit fraud and abuse in the Lifeline eligibility determination process. Second, we act to improve the integrity of Lifeline enrollments and direct USAC to continue targeted reviews of enrollment documentation. Finally, we require additional documentation during the annual recertification process for certain Lifeline subscribers.

¹⁸⁴ See NARUC Comments at 24 ("Whenever there is a company specific or a systemic problem with any aspect of the Lifeline program, it is likely to be an issue that extends beyond a single state. States and the USAC can leverage resources to achieve better oversight of both State and federal Lifeline programs.").

¹⁸⁵ For example, USAC posts statistics on Lifeline participation rates by state, support distribution information and a link to a disbursement search tool on its website. USAC, Program Data, <https://www.usac.org/lifeline/learn/program-data> (last visited Nov. 13, 2019).

¹⁸⁶ See *2016 Lifeline Order*, 31 FCC Rcd at 4117, para. 423 (finding that publishing USAC data on subscriber counts directly on the USAC website "increases transparency and continues to promote accountability in the program.).

¹⁸⁷ States are reminded that they may continue to request access to NLAD in order to access subscriber data for their state. This data could aid in the administration and enforcement of the state programs. *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10510, para. 103; USAC, National Lifeline Accountability Database, Account Types, <https://www.usac.org/lifeline/enrollment/national-lifeline-accountability-database-nlad/account-types/> (last visited Nov. 12, 2019).

¹⁸⁸ The Privacy Act of 1974, 5 U.S.C. § 552a.

1. Preventing Waste, Fraud, and Abuse by Enrollment Representatives

68. We first conclude that ETCs should be prohibited from paying commissions based on the number of submitted Lifeline applications or approved enrollments to individuals who enroll Lifeline subscribers or who verify eligibility of Lifeline subscribers on behalf of ETCs. In this context, we understand “commissions” to broadly include direct financial compensation or other incentives such as non-cash rewards and travel incentives. In addition, we codify the requirement that USAC register all Lifeline ETC enrollment representatives. For these purposes, we define an enrollment representative as an employee, agent, contractor, or subcontractor, acting on behalf of an ETC or third-party organization, who directly or indirectly provides information to USAC or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment. We also make clear that ETCs are ultimately responsible for ensuring that all enrollment representatives register with USAC, and ETCs will be subject to enforcement action if an individual who has not registered with USAC acts as an enrollment representative on that ETC’s behalf. The combination of (1) prohibiting ETCs from paying commissions to individuals who enroll Lifeline subscribers or who provide information for eligibility verification, recertification and changes to subscribers’ information, and (2) requiring registration of each individual enrollment representative, will help to ensure accountability and prompt ETCs to crack down on improper behavior before it happens, thereby preventing waste, fraud, and abuse in the Lifeline program.

69. *Prohibiting Enrollment Representative Commissions.* Much of the waste, fraud, and abuse in the Lifeline program revealed by audits, enforcement investigations, and criminal proceedings has involved non-compliance by the ETC employees and contractors charged with reviewing applicants’ eligibility documentation and enrolling new Lifeline subscribers. However, the Commission’s rules have thus far not directly addressed the common practice by ETCs of providing commissions for enrollment representatives to enroll consumers in the Lifeline program. The Commission has long held that ETCs are liable for rule violations committed by their agents or representatives,¹⁸⁹ but there is no specific Commission rule targeting enrollment representative misbehavior.

70. Since the *2012 Lifeline Order*, there have been reports of ETCs hiring enrollment representatives who did not comply with the Lifeline program rules for eligibility determinations.¹⁹⁰ It is common practice for ETCs to offer commissions for agents to enroll consumers in the Lifeline program.¹⁹¹ However, even ETCs have acknowledged the mixed incentives these compensation schemes foster, with TracFone, for example, filing a petition asking the Commission to “prohibit[] incentive-based agent compensation.”¹⁹² Moreover, members of Congress have expressed concern to the Commission about the use of enrollment representatives who fraudulently enroll subscribers in the Lifeline program.¹⁹³

¹⁸⁹ See 47 U.S.C. § 217; see also Enforcement Advisory, Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC’s Lifeline Program Rules, 28 FCC Rcd 9022 (EB 2013).

¹⁹⁰ See, e.g., Mike Holfeld, *TracFone: 350K Phones Handed out Illegally*, WKMG News 6, <https://www.clickorlando.com/news/tracfone-350k-phones-handed-out-illegally> (last visited July 31, 2019) (detailing a lawsuit by TracFone against Florida-based marketing firms that sought to enroll ineligible subscribers in the Lifeline program); Jennifer Loren, *Oklahoma is Ground Zero for Government Cell Phone Fraud*, Oklahoma’s Own News on 6, <http://www.newson6.com/story/19914572/oklahoma-is-ground-zero-for-government-cell-phone-fraud> (last visited July 31, 2019).

¹⁹¹ See, e.g., NaLA Comments at 86-87.

¹⁹² TracFone, Petition for Reconsideration, WC Docket Nos. 11-42 et al., at 2 (filed June 23, 2016); see also Federal Communications Commission, Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, 81 Fed. Reg. 45447 (July 14, 2016) (setting deadlines for comments and reply comments on the Petition).

¹⁹³ See Letter to Acting Chairwoman Clyburn, FCC, from Senator Claire McCaskill (Sept. 19, 2013); see also Letter to The Honorable Gene L. Dodaro, Comptroller General of the United States, from Committee on Homeland Security and Governmental Affairs, United States Senate at 2 (Aug. 14, 2017).

71. We also have tangible evidence of enrollment representative impropriety leading to waste and abuse of the program. In December 2016, the Commission’s Enforcement Bureau entered into a Consent Decree with Lifeline ETC Total Call Mobile (TCM), where TCM admitted it used a commission compensation system for enrolling Lifeline subscribers that had resulted in “[h]undreds of TCM field agents [engaging] in fraudulent practices to enroll consumers who were . . . otherwise not eligible for the Lifeline program.”¹⁹⁴ TCM had “sought and received reimbursement for tens of thousands of consumers who did not meet the Lifeline eligibility requirements,”¹⁹⁵ and TCM agreed to pay a fine of \$30 million dollars for violating the Lifeline rules.¹⁹⁶

72. Even with public reports of enrollment abuse and successful enforcement actions against Lifeline ETCs, the Commission’s insight into the day-to-day enrollment operations of all ETCs is limited. GAO raised concerns in 2017, when it confirmed in a report on its performance audit of the program that, after conducting extensive data review and covert investigations into ETC Lifeline enrollment practices, the Commission and USAC “have limited knowledge about potentially adverse incentives that providers might offer employees to enroll [Lifeline] subscribers” but noted that apparent findings of large-scale improper enrollments from enforcement investigations was cause for concern.¹⁹⁷ The GAO raised similar concerns regarding the recertification process.¹⁹⁸ Since that report was issued, additional investigations and reports have provided more indications that enrollment representative commissions create incentives that increase the likelihood of waste, fraud, and abuse in the program. The Commission OIG’s 2018 Semiannual Report to Congress noted that a Lifeline enrollment agent “pled guilty to conspiracy to commit wire fraud” and was ordered to pay restitution to the Commission of over \$200,000 for having enrolled “850-950 non-existent Lifeline customers in the program” and having received commission for those fake enrollments.¹⁹⁹

73. Finally, in October 2018, the Commission released the largest NAL to date against a Lifeline provider when it proposed a \$63 million forfeiture against American Broadband & Telecommunications Company (American Broadband).²⁰⁰ American Broadband’s agents apparently repeatedly enrolled ineligible or fake subscribers and relied on master agents and sales agents paid on commission.²⁰¹ Over 42,000 customers were apparently claimed by American Broadband over the NAL period, and many of those were claimed due to improper enrollments by the agents.²⁰²

74. In the *2017 Lifeline Notice*, the Commission sought comment on prohibiting an ETC from offering or providing ETC personnel with commissions based on enrollments or verification of eligibility and on codifying a requirement that ETC representatives who enroll consumers in Lifeline must

¹⁹⁴ See *Total Call Mobile Consent Decree*, 31 FCC Rcd at 13210-12, paras. 9, 13; see also *id.* at 13214, para. 25 (“TCM admits . . . that its actions in paragraphs 9 through 16, and that were subject of the TCM NAL violated Sections 54.405, 54.407, 54.409, and 54.410 of the Commission’s Rules.”).

¹⁹⁵ *Id.* at 13212, para. 16.

¹⁹⁶ See *id.* at 13215, para. 29.

¹⁹⁷ See, e.g., 2017 GAO Report at 56 (“Companies responsible for distributing Lifeline phones and service that use incentives for employees to enroll subscribers for monetary benefit increase the possibility of fictitious or ineligible individuals being enrolled into Lifeline.”).

¹⁹⁸ *Id.* at 43 (detailing enrollment data for individuals who were deceased by at least one year prior to their Lifeline enrollment or recertification date).

¹⁹⁹ See 2018 OIG Report to Congress at 10.

²⁰⁰ See generally *American Broadband NAL*, 33 FCC Rcd 10308.

²⁰¹ See *id.* at 10315-16, para. 18.

²⁰² See *id.* at 10364, para. 177, Table 11.

register with USAC.²⁰³ The Commission stated its belief that prohibiting commissions related to enrolling subscribers in the Lifeline program “may benefit ratepayers by reducing waste, fraud, and abuse in the program.”²⁰⁴ It also noted that many ETCs use commissions as a means of compensating sales employees and contractors and that such compensation schemes “can encourage the employees and agents of ETCs to enroll subscribers in the program regardless of eligibility, enroll consumers in the program without their consent, or engage in other practices that increase waste, fraud, and abuse in the program.”²⁰⁵

75. In response to the *2017 Lifeline Notice*, numerous commenters supported limiting or prohibiting ETCs from offering or providing commissions to sales agents or employees who verify the eligibility of potential Lifeline subscribers.²⁰⁶ Some commenters suggested that the Commission should only address commissions for third-party sales agents or representatives.²⁰⁷ However, while an ETC may have more supervision over its direct employees than third-party sales agents or representatives, we do not believe that employees are immune from the financial motivation that commissions might offer to commit potentially fraudulent activity. Several commenters also suggested that any limitation on commissions was unnecessary or needed further evaluation in light of the rollout of the National Verifier.²⁰⁸ While the National Verifier plays an important role in helping to address waste, fraud, and abuse in the program, we do not believe that it will eliminate the financial incentives for individuals to attempt to defraud the Lifeline program. Commissions based on the number of Lifeline applications or successful Lifeline enrollments are one such incentive, and by limiting them today, we remove a financial incentive for committing fraudulent activity.

76. Based on the record before us and to limit a potential source for fraud or abuse in the program, we prohibit ETCs from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier.²⁰⁹ This restriction applies to employees, agents, officers, or contractors working on behalf of the ETC who enroll Lifeline applicants, review eligibility documents or recertification forms, including sales and field agents, and any direct supervisors of those individuals, whether employed by the ETC or employed by a third-party contractor of the ETC. For purposes of this rule, an ETC’s payment to a third-party entity that in turn provides commissions to an enrollment representative is subject to this prohibition. This restriction is not intended to prevent ETCs from using customer service representatives to assist consumers in the Lifeline application and recertification processes. We add section 54.406(b) of the Commission’s rules to prohibit ETCs from

²⁰³ See *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10506, paras. 90-91.

²⁰⁴ *Id.* at 10506, para. 91.

²⁰⁵ *Id.*

²⁰⁶ See, e.g., NASUCA Comments at 24 (stating that a “prohibition against commissions paid to ETC representatives would reduce incentives to create phantom subscribers,” an issue that was flagged in the GAO Report); Public Utility Division of The Oklahoma Corporation Commission Comments at 11-12; Michigan Public Service Commission Comments at 10-11 (“MPSC agrees and supports the FCC’s proposal to prohibit commissions of ETC personnel if it appears there are . . . problems occurring due to the commissions,” but is concerned that banning commissions could cause ETCs to initiate mandatory quotas for sales agents); GCI Comments at 12; Low Income Consumer Advocates Comments at 21.

²⁰⁷ See Smith Bagley, Inc. Comments at 10-11 (supporting prohibiting commissions for third-party, non-employee sales agents); Florida Public Service Commission Comments at 5.

²⁰⁸ See Q Link Comments at 18 (agreeing that the Commission should prohibit commissions for personnel who review or verify subscriber eligibility, but arguing that it is necessary to ban commissions for “street agents without further experience under the National Verifier”); Missouri Public Service Commission Comments at 9.

²⁰⁹ See Florida Public Service Commission Comments at 5; see also GCI Comments at 12 (stating that those responsible for final review and verification of a subscriber’s eligibility should not receive commission).

utilizing commission structures for those enrollment representatives involved in the eligibility determination, enrollment process, or recertification process. These changes shall be effective 60 days after publication of this Fifth Report and Order in the Federal Register.

77. We expect that the targeted prohibition of certain practices by ETC employees and agents will help reduce the incentive for enrollment, customer service, and recertification employees to commit fraud against the Lifeline program. In the Commission's investigation of American Broadband, the conduct of the agents hired by the company ranged from enrolling subscribers who were apparently not eligible and apparently falsifying eligibility documentation, to apparently creating false identities and enrolling false and deceased individuals into the program.²¹⁰ While an ETC is liable for the actions of its agents and representatives, and the Commission has the authority to recover improper reimbursements distributed to ETCs, the record demonstrates that this liability has not been sufficient to successfully deter fraud committed by employees and agents. We believe prohibiting ETCs from offering commissions to certain employees or agents, along with other measures taken in this item, will prevent improper enrollments before they happen.

78. *Enrollment Representative Registration with USAC.* To further prevent waste, fraud, and abuse, we next require that all ETC enrollment representatives register with USAC to access USAC's Lifeline systems in the process of Lifeline enrollment, benefit transfers, subscriber information updates, recertification, and de-enrollment. In July 2017, USAC was directed to require enrollment representatives of ETCs to register with USAC to enable USAC to both verify the identity of individual enrollment representatives and "determine the ETC(s) he or she works for."²¹¹ USAC was directed to provide each enrollment representative with a unique identifier to be used by the enrollment representative to interact with NLAD and to lock enrollment representatives out of the NLAD "for a set period of time after too many invalid subscriber entry attempts."²¹² USAC was further directed to incorporate the data gained from the enrollment representative registration system into its audit findings and to report any suspected abuse by individual enrollment representatives to the Commission's OIG "for evaluation as to whether civil or criminal action is appropriate and to the Enforcement Bureau for administrative action and remedies."²¹³

79. The Commission then asked for public comment on codifying a rule to require enrollment representative registration in the *2017 Lifeline Notice*.²¹⁴ The Commission sought comment on having the representative registration identifiers be used when enrolling consumers via the National Verifier, as well as when interacting with the NLAD.²¹⁵ The Commission reiterated that it is "aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline rules. . . . [including] data manipulation to defeat NLAD protections, using personally identifying information of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers."²¹⁶ In light of recent developments, such as the *American Broadband NAL* where several enrollment representatives allegedly engaged in the aforementioned practices²¹⁷ and the OIG Report citing of an enrollment representative who suffered criminal penalties for fraudulently enrolling

²¹⁰ See *American Broadband NAL*, 33 FCC Rcd at 10322-36, paras. 37-85.

²¹¹ July 2017 Letter to USAC at 4.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10506-10507, paras. 92-94.

²¹⁵ See *id.* at 10506, para. 92.

²¹⁶ See *id.* at 10507, para. 92.

²¹⁷ See *American Broadband NAL*, 33 FCC Rcd at 10322-36, paras. 37-85.

subscribers in Lifeline,²¹⁸ we conclude that codifying in the Commission's rules the requirement that specified ETC enrollment representatives must register with USAC would help to combat waste, fraud, and abuse.

80. Several commenters supported a Commission rule requiring that ETCs' enrollment representatives register with USAC to submit information to the NLAD or National Verifier.²¹⁹ We agree this requirement would provide clarity to all parties and would assist the Commission and USAC in detecting and investigating potential waste, fraud, or abuse by an ETC's enrollment representatives. We therefore amend the Commission's rules and require each ETC enrollment representative to register with USAC and obtain a unique representative identification number. When enrolling or recertifying individuals in the Lifeline Program, ETCs must use the Lifeline Program Application Form "in all states and territories to obtain the information necessary to evaluate whether a consumer is eligible to receive Lifeline service and to obtain the consumer's certifications," and the Lifeline Program Annual Recertification Form "in all states and territories to recertify the eligibility [of] subscribers who are receiving Lifeline service."²²⁰ As such, an ETC will be in violation of section 54.410 of the Commission's rules, as well as this new rule, if the ETC's enrollment representative enrolling a consumer in Lifeline or submitting a consumer's recertification form does not enter their representative identification number as required by this rule and by Section 5 of the Lifeline Program Application Form and Section 5 of the Lifeline Program Annual Recertification Form.²²¹ ETCs are responsible for ensuring that their enrollment representatives complete this registration process. This registration process does not absolve ETCs of Commission rule or state law violations committed by their enrollment representatives or other employees. The rule shall become effective 90 days after the publication of the text or summary of this Order in the Federal Register.

81. For the purposes of the ETC representative registration system, all enrollment representatives must register with USAC and receive a unique identifier.²²² In order to register, each such

²¹⁸ See 2018 OIG Report to Congress at 10.

²¹⁹ See, e.g., Low Income Consumer Advocates Comments at 20-21 (doing so "should help ensure ETC accountability for accurate data, deter improper tactics, and help USAC and the FCC identify suspicious activity"); Missouri Public Service Commission Comments at 9 ("ETC representatives submitting information to USAC should be registered"); Minnesota Public Utilities Commission Comments at 8; TracFone Comments at 48 (a registration program for agents "and the promulgation of rules and standards governing agent conduct would empower the Commission"); NASUCA Comments at 24 ("NASUCA supports the development of protocols to assure that ETCs representatives involved in the enrollment process can be matched to the subscriber application . . ."); Safety Net Comments at Attachment; Citizens Against Government Waste Comments at 10 (all ETC customer enrollment representatives should "be registered, trained, and certified by USAC before using the National Verifier and NLAD").

²²⁰ *Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program*, Public Notice, 33 FCC Rcd 1920, 1921 (WCB 2018) (requiring ETCs to use Form 5629, the Lifeline Program Application Form, and Form 5630, the Lifeline Program Annual Recertification Form) (*Lifeline Universal Forms Public Notice*).

²²¹ This is not meant to impact the previous Bureau guidance that "[i]f state law, state regulations, or a state agency requires ETCs to use a pre-existing universal enrollment or recertification form for Lifeline subscribers in that state, ETCs may continue to use those forms instead of the corresponding forms identified." *Lifeline Universal Forms Public Notice*, 33 FCC Rcd at 1920.

²²² An enrollment representative is required to complete Section 5 of the Universal Lifeline Program Application Form, FCC Form 5629, Agent Information or Section 5 of the Universal Lifeline Program Annual Recertification Form, FCC Form 5630, Agent Information with their USAC-provided unique identifier. These numbers must be entered in the "agent ID number" section on the Universal Application Form (FCC Form 5629) and on the Universal Annual Recertification Form (FCC Form 5630) for individual subscribers whose application or recertification form is submitted by an enrollment representative. The Universal Lifeline Program Application Form can be found at https://www.usac.org/wp-content/uploads/lifeline/documents/forms/LI_Application_UniversalForm.pdf (last visited

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ETC enrollment representative must provide information that USAC, after consultation with the Bureau and the Office of Managing Director, determines is necessary to identify and contact him or her; this information may include first and last name, date of birth, the last four digits of his or her social security number, personal email address, and residential address. It is critical that USAC confirms that individuals that interact with its systems are actually who they claim to be, and we expect that this information would allow USAC to conduct a successful identity check during the registration process for the vast majority of registrants. In light of ETCs' concerns about requiring their employees to submit the last four digits of their social security number to the registration system, we permit USAC to make the submission of such information optional.²²³ However, we note that if a registrant declines to provide the last four digits of his or her social security number, that registration may be significantly less likely to be automatically validated through the third-party identity check, thus requiring the registrant to provide additional documentation confirming his or her identity to complete the registration process.²²⁴ Once issued, the representative identification number will be tied to a specific enrollment representative and will not be transferable. To ensure compliance, we also conclude that ETCs are responsible for the proper enrollment of their representatives in this system, as an ETC's enrollment representative needs to be registered with USAC prior to enrolling or recertifying consumers in the Lifeline program and prior to completing and submitting the Lifeline Program Application Form and Lifeline Program Annual Recertification forms.²²⁵

82. We recognize the concern with collecting and retaining personal information from ETC enrollment representatives;²²⁶ however, such information is necessary to verify the identity of the person completing enrollment representative activities, and to assign that individual a unique identification number to access the NLAD and the National Verifier.²²⁷ In particular, it is essential that USAC and the Commission be able to monitor for and detect patterns of noncompliant or fraudulent behavior by specific enrollment representatives, especially because it is not uncommon for enrollment representatives to be employed by multiple ETCs.²²⁸ The requested enrollment representative information is narrowly tailored and is no broader than necessary to verify the identity of the enrollment representative before providing him or her access to the NLAD and National Verifier and to enable USAC to monitor the activities of specific enrollment representatives. Furthermore, this information will allow USAC and others to take action against an enrollment representative who has engaged in noncompliant or fraudulent behavior and prevent such a representative from enrolling or recertifying Lifeline subscribers for any ETC. Given the sensitive nature of this information, we direct USAC to comply with both the Privacy Act of 1974 and the

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on Nov. 12, 2019) and the Universal Annual Recertification Form can be found at https://www.usac.org/wp-content/uploads/lifeline/documents/forms/LI_Recertification_UniversalForms.pdf (last visited on Nov. 12, 2019).

²²³ See, e.g., Letter from Norina Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 2-3 (filed Aug. 14, 2019) (Sprint *Ex Parte*).

²²⁴ We direct USAC to develop a dispute process for those who believe they have been wrongfully barred from USAC's systems for the Lifeline program.

²²⁵ See generally *Lifeline Universal Forms Public Notice*.

²²⁶ See, e.g., ITTA Comments at 5-7.

²²⁷ The identity verification database that is currently used by USAC requires the last four digits of the social security number (SSN) of the person being verified. Without the last four digits of the SSN, there is a higher probability that a person is either unable to have his or her identity verified or that a false match would occur. Collecting the last four digits of the SSN along with the full date of birth, full name, and address helps to ensure that the enrollment representative's identity is properly verified and that the representative's enrollment activities can be adequately tracked and flagged for abuse. As mentioned above, ensuring that the unique identifier is assigned to the correctly identified enrollment representative will also help prevent a representative from being incorrectly barred from USAC's systems for the Lifeline program, including the NLAD and the National Verifier.

²²⁸ ETCs remain liable for any enrollment representative misconduct. See 47 U.S.C. § 217.

Federal Information Security Management Act of 2002.²²⁹ In implementing this change, we recognize that USAC may, for administrative efficiency, consolidate the registration system we codify in this Order with existing or future registration processes that it uses to allow access to its technological systems (for example, allowing authorized certifying officers to log into the Lifeline Claims System).²³⁰

83. We believe that these security measures and the narrowly tailored nature of the personal information that USAC is collecting address the concerns that stakeholders have recently expressed regarding a registration requirement.²³¹ These stakeholders also raised concerns about the application of any registration requirement to direct ETC employees and suggested that any direct ETC employees not be required to submit the same level of personal information as agents or representatives not directly employed by an ETC.²³² However, limiting the personal information collected for those individuals to the individual's name and business contact information would impede USAC's ability to independently verify the identity of registered individuals and could obscure potential duplicate registrations. Also, in addition to documenting fraudulent activity from sales agents and external representatives, the Commission has documented apparently fraudulent practices executed by direct ETC employees.²³³ A two-tiered approach to registering enrollment representatives would create an unacceptable risk of fake or duplicate accounts and could give ETCs the opportunity to improperly characterize their enrollment representatives as direct employees to minimize USAC's ability to oversee enrollment representative activity, creating an avenue for waste, fraud, and abuse. As such, we believe that it is appropriate for this registration requirement to include direct ETC employees, better positioning the Commission, USAC, and even ETCs to address potentially fraudulent activity.

84. One stakeholder group specifically suggested that the Commission issue a Public Notice seeking further comment on the enrollment representative registration requirement.²³⁴ However, as stated above, the Commission provided ample notice to stakeholders and sought comment on a range of issues impacting this effort in the *2017 Lifeline Notice*.²³⁵ The *Notice* sought comment on the codification process generally, how the Commission should define an ETC enrollment representative, what information should be solicited for this database, and what privacy and security practices should be used to safeguard this information.²³⁶ These are all considerations that the Commission acts on today, and the

²²⁹ See Privacy Act of 1974, 5 U.S.C. § 552a (2006); Federal Information Security Management Act of 2002, 44 U.S.C. § 3551 (2006).

²³⁰ See Universal Service Administrative Company, Reimbursement, <https://www.usac.org/lifeline/reimbursement/> (last visited Nov. 12, 2019).

²³¹ See Letter from Genevieve Morelli, President, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 2 (filed July 24, 2019) (ITTA *Ex Parte*); Letter from Mike Saperstein, Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 2 (filed July 3, 2019) (USTelecom *Ex Parte*); Letter from Michael Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 1 (filed June 26, 2019) (NTCA *Ex Parte*); Letter from Stacey Brigham, Regulatory Director, TCA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed July 19, 2019) (TCA *Ex Parte*); Sprint *Ex Parte* at 2-3; Letter from Bill Durdach, Director, WTA – Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 2 (filed Aug. 19, 2019) (WTA *Ex Parte*).

²³² See ITTA *Ex Parte* at 1-2; USTelecom *Ex Parte* at 2; NTCA *Ex Parte* at 2; TCA *Ex Parte* at 1; Sprint *Ex Parte* at 2; WTA *Ex Parte* at 1-2.

²³³ See *Total Call Mobile NAL*, 31 FCC Rcd at 4199, para. 27 (2016) (detailing apparent actions by ETC employees, such as overriding initial rejections or disguising defective eligibility information, to assist sales agents with the submission of apparently fraudulent Lifeline enrollments).

²³⁴ See WTA *Ex Parte* at 2.

²³⁵ See *supra* para. 79; see also *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10506, paras. 90-94.

²³⁶ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10507, para. 92.

suggestion that stakeholders did not have ample notice or time to comment on these issues is not supported by the factual history of this proceeding.

85. TracFone Wireless, Inc. (TracFone) also raised several proposals for addressing different aspects of the enrollment representative registration process.²³⁷ TracFone suggested that the Commission prohibit third party agents from representing more than one Lifeline provider at any one time.²³⁸ However, we believe that such a prohibition would be overly broad and unsupported by this proceeding's record. TracFone also argued that registration should only be required for individuals involved in the eligibility verification process if those individuals are compensated with commissions.²³⁹ However, since this Order prohibits commissions for enrollment representatives and their supervisors, applying the registration requirement only to representatives who receive commission-based compensation would render the requirement meaningless. USAC and the Commission would lose the ability to monitor enrollment representatives' practices and to proactively address potential fraud committed by these individuals.

86. As part of the enrollment representative registration process, we also require individual enrollment representatives with direct access to USAC's systems to sign a user agreement for NLAD and the National Verifier before gaining access to NLAD or the National Verifier.²⁴⁰ We direct USAC to develop a user agreement that requires these enrollment representatives to acknowledge that they will only use NLAD and the National Verifier for the specified purposes and that their access to either or both databases may be suspended or terminated for unauthorized or unlawful use. Individual enrollment representatives with direct access to these systems must re-submit the user agreements annually and must also confirm in USAC's database that their contact information is up to date within 30 days of any change in such information. This will ensure that enrollment representatives' information in the database remains current and that the enrollment representative is still actively using the National Verifier or the NLAD on behalf of the ETC. In operating the ETC representative registration system, USAC shall have the authority to protect the integrity of its registration system by, among other things, locking the NLAD and National Verifier accounts of ETC enrollment representatives with a prolonged inactive period (i.e., consecutive months) or a pattern of suspicious activity, such as unusual rates of invalid enrollment attempts. While a representative's account is locked, the representative will lose the ability to enter, alter, remove, or view subscriber information in the NLAD and National Verifier systems.

2. Enrollment Process Improvements

87. *Independent Economic Household Worksheets.* We next amend the Commission's rules to limit when an ETC can record an Independent Economic Household (IEH) worksheet in the NLAD. Specifically, an ETC will be permitted to do so only where the consumer completing the worksheet shares an address with another Lifeline subscriber.²⁴¹ This limitation will assist USAC's efforts to detect

²³⁷ Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Greenberg Traurig, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 1 (filed Sept. 5, 2019).

²³⁸ *Id.* at 2.

²³⁹ *Id.* at 2-3.

²⁴⁰ USAC currently requires all ETC users and state users to sign an NLAD access agreement before gaining access to NLAD. See USAC, National Lifeline Accountability Database at <https://www.usac.org/lifeline/enrollment/national-lifeline-accountability-database-nlad/account-types/> (last visited July 23, 2019); NLAD Access Agreement, <https://www.usac.org/wp-content/uploads/lifeline/documents/nlad/NLAD-Access-Agreement.pdf>.

²⁴¹ See *2017 Lifeline Order and Notice*, 32 FCC Rcd 10508, para. 98. This worksheet is also referred to as the One-Per-Household or Household Worksheet. See USAC, Forms – Lifeline Program, <https://www.usac.org/lifeline/additional-requirements/forms/> (last visited Nov. 12, 2019).

improper duplicate addresses among Lifeline subscribers listed in the NLAD and will reduce administrative burdens on USAC.

88. The Commission's rules limit Lifeline service to one subscription per household.²⁴² There are instances, however, where multiple subscribers share the same residential address but are considered independent economic households under the Lifeline program rules. For example, multiple subscribers living in a shelter may share the same address, or multiple subscribers may provide the same apartment building address without a unit number. Alternatively, subscribers might share the same home address, but would not be part of the same household if they do not contribute to and share in the household income and expenses. The IEH worksheet asks several questions that help the ETC and subscriber determine if the subscriber is an independent household in the event that another subscriber lives at the same address.²⁴³ The Commission's rules require that the IEH worksheet certifying compliance with the one-subscription-per-household rule be completed at the time of enrollment if the consumer resides at the same address as another individual receiving a Lifeline benefit and during any recertification in which the subscriber changes households, and as a result, shares an address with another Lifeline subscriber.²⁴⁴ However, an ETC often will record the collection of an IEH worksheet in the NLAD and note that the applicant is in an independent economic household, even if the subscriber does not share an address with other Lifeline subscribers.²⁴⁵

89. In the *2017 Lifeline Notice*, the Commission sought comment on the practice of collecting and recording worksheets from all subscribers, regardless of whether that subscriber shares an address with another Lifeline subscriber, and asked whether that practice makes it more difficult for USAC to detect improper activity. Noting that the "[p]rophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse," the Commission asked whether it should amend its rules to permit the use of the form only in instances where the ETC has been notified that the applicant shares the same residential address as another Lifeline subscriber.²⁴⁶

90. Some commenters argue that it is important that providers be able to collect the IEH worksheet from the applicant at the time of enrollment because providers may not receive a real time notification that the applicant shares an address with another Lifeline customer.²⁴⁷ Others are generally

²⁴² 47 CFR §§ 54.404(b)(3), 54.410(d)(ii-v). For purposes of the Lifeline program, a household is defined "as any individual or group of individuals who live together at the same address and share income and expenses." 47 CFR § 54.410(d)(1)(iii).

²⁴³ See 47 CFR § 54.410(g); *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10508-10509, para. 98. In February 2018, the Commission announced the availability of a universal Lifeline application, a recertification form and an IEH worksheet to be used by ETCs by July 1, 2018. *Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program*, Public Notice, 33 FCC Rcd 1920 (WCB 2018). These forms are available on USAC's website, <https://www.usac.org/lifeline/additional-requirements/forms/>.

²⁴⁴ 47 CFR § 54.410(g).

²⁴⁵ See *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10509, para. 98. USAC has previously reported that 43% of subscribers submitting an IEH worksheet did not actually reside with another subscriber, meaning all of their information had already been verified. See *The Lifeline Program Examining Recent Allegations of Waste, Fraud, and Abuse Interim Report*, U.S. House of Representatives Committee on Energy and Commerce Ranking Member Frank Pallone, Jr. Democratic Staff Report at 20, n.135 (July 2016) (citing Letter from Vickie S. Robinson, Vice President and General Counsel, USAC to David Goldman, Chief Counsel, Subcommittee on Communications and Technology, Committee on Energy and Commerce Democratic Staff (July 6, 2016) (on file with Committee Staff)), [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20\(7.12.2016\).pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20(7.12.2016).pdf).

²⁴⁶ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10508, para. 98.

²⁴⁷ NaLA Comments at 92; see also GCI Reply Comments at 7, Letter from John J. Heitmann, Counsel to Boomerang Wireless, LLC d/b/a enTouch Wireless and AmeriMex Communications Corp d/b/a SafetyNet Wireless,

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supportive of the Commission's proposal to restrict the collection of the IEH worksheets.²⁴⁸ We recognize the strong preference that some ETCs have for routinely collecting the IEH worksheet at the outset from Lifeline applicants, regardless of whether that applicant shares an address with another Lifeline customer. Upon a review of the record, we find no compelling reason to prohibit the practice of collecting the IEH worksheet from all applicants, but in order to more readily identify through use of the "IEH flag" which subscribers share an address with another Lifeline subscriber, we find it necessary to restrict the recordation of the IEH worksheet in the NLAD. Accordingly, we find that amending section 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses.²⁴⁹ ETCs shall not record an IEH worksheet in NLAD in any other situation. These changes shall be effective 30 days after the publication of this Order in the Federal Register.

91. Finally, this rule does not alter ETCs' conduct in NLAD opt-out states (California, Oregon, and Texas) because the rule only covers the information that ETCs submit to the NLAD. More specifically, ETCs in NLAD opt-out states must continue to follow the relevant state laws, regulations, or agency instructions. To be clear, because this rule change impacts the recordation of IEH worksheets in the NLAD and not the use of the IEH worksheet itself, ETCs are still permitted to collect IEH worksheets prior to enrollment. ETCs may not record that subscriber's IEH form in the NLAD, however, unless the NLAD has alerted the ETC that the subscriber shares an address with another Lifeline subscriber.

92. *Deceased Subscribers.* In its report, GAO identified 6,378 deceased individuals that remained enrolled in Lifeline even though they were reported as deceased for over a year before enrollment or recertification.²⁵⁰ To combat this issue, USAC was directed to de-enroll the subscribers GAO identified as deceased, and going forward on a quarterly basis, to check a sample of subscribers against the Social Security Death Master File and to de-enroll subscribers and recoup reimbursements as appropriate.²⁵¹ Since then, USAC has added a check of the Social Security Death Master File when validating a consumer's identity, which prevents a consumer appearing on the Social Security Death Master File from enrolling in the program unless the consumer successfully disputes the automated result through documentation.²⁵² In the *2017 Lifeline Notice*, the Commission sought comment on whether it should codify USAC's current practice of cross-checking a subscriber's information against the Social Security Death Master File at the time of enrollment and recertification.²⁵³ Commenters agree that a

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to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287, Attach. at 8 (filed Mar. 27, 2018) (enTouch Wireless and SafetyNet Wireless *Ex Parte*) (noting support for the limited use of IEH worksheets except in situations where there is no real-time notice of address duplications or certifications on file from managers of multi-person residences). Smith Bagley, Inc. argues that collecting the worksheet at the outset is essential where an applicant reports a descriptive address, as is often the case for applicants that live on Tribal Lands. SBI Comments at 11-12. The change we make in this Fifth Report and Order concerning IEH worksheets does not preclude providers from collecting IEH worksheets at the outset of the enrollment process.

²⁴⁸ Public Utility Division of the Oklahoma Corporation Commission (OK PUD) Comments at 14; Low Income Consumer Advocates Comments at 21.

²⁴⁹ See *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10508, para. 98 & 10526, App. B.

²⁵⁰ See 2017 GAO Report at 43.

²⁵¹ July 2017 Letter to USAC at 3.

²⁵² See USAC, Third Party Identity Verification (TPIV) Failure Resolution, <https://www.usac.org/lifeline/enrollment/dispute-resolution/third-party-identity-verification-tpiv-failure-resolution/> (last visited Nov. 12, 2019).

²⁵³ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10509, para. 101.

codification of USAC's current practice is a reasonable way to help control waste, fraud, and abuse.²⁵⁴ Accordingly, we add a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. Our revised rules prohibit ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline.²⁵⁵ These changes shall be effective 90 days after announcement of Office of Management and Budget approval under the Paperwork Reduction Act.

93. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification. We also direct USAC to continue its efforts to prevent ETCs from claiming and seeking reimbursement for subscribers identified as deceased and listed on the Social Security Death Master File. Specifically, USAC shall continue sampling existing subscribers on a quarterly basis and, for any subscriber identified as deceased according to the Social Security Death Master File, USAC shall first require ETCs to provide "proof of life" documentation and then de-enroll any subscribers who cannot produce such documentation to successfully dispute the Social Security Death Master File match.²⁵⁶

94. *Reimbursement Process.* We next revise our rules to include a limitation on the subscribers for which an ETC may claim and receive reimbursement. In the *2017 Lifeline Notice*, the Commission sought comment on whether it should amend its rules to require that disbursements be based on the subscribers enrolled in NLAD as a way to prevent reimbursements for fictitious or "phantom" subscribers that are not in NLAD and are improperly claimed by providers.²⁵⁷ Section 54.407 of the Commission's rules provides that reimbursement for providing Lifeline service will be provided directly to the ETC "based on the number of actually qualifying low-income customers it serves directly as of the first day of the month."²⁵⁸ We now codify the requirement that the number of eligible subscribers an ETC may claim for reimbursement must be no more than the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the data in the NLAD. In the three NLAD opt-out states, ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning which subscribers can be claimed.²⁵⁹ We direct USAC to continue to base its Lifeline claims and reimbursement process on the number of qualifying subscribers the ETC serves on the snapshot date. USAC shall base the reimbursement on data available in NLAD, future USAC systems that record program enrollment, or on data provided by a state administrator for the

²⁵⁴ See NaLA Comments at 95-96.

²⁵⁵ 47 CFR § 54.404(b)(12).

²⁵⁶ Documentation accepted by USAC for purposes of proving that an individual is not deceased includes a current mortgage or lease statement, a current pay stub, a current retirement or pension statement of benefits, a notarized statement affirming the subscriber's identity and living status, a current utility bill, a current unemployment or workers compensation statement, current eligibility documentation from a state eligibility database or administrator or government assistance program documentation. Documentation is considered current if it is dated within three months of USAC's review. USAC, Third Party Identification Verification (TPIV) Failure Resolution, <https://www.usac.org/lifeline/enrollment/dispute-resolution/third-party-identity-verification-tpiv-failure-resolution/#verification> (last visited Nov. 12, 2019).

²⁵⁷ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10509-10, para. 101. The Commission received limited comments on this proposal.

²⁵⁸ 47 CFR § 54.407(a).

²⁵⁹ Some NLAD opt-out states already provide ETCs information on which subscribers can be claimed for support. If an opt-out state does not already provide this information to ETCs, this order does not require states to begin providing this information to ETCs.

NLAD opt-out states. We amend section 54.407(a) to reflect this requirement.²⁶⁰ This rule change shall be effective 30 days after publication of this Fifth Report and Order in the Federal Register.

3. Recertification

95. *Improving Recertification Integrity.* We next amend the Commission's rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification in certain circumstances. In the *2017 Lifeline Notice*, the Commission acknowledged that the current rules allow a subscriber to self-certify that he or she continues to be eligible for the Lifeline program, even if a database indicates that the subscriber's participation in a qualifying program has changed and his or her eligibility cannot be determined by querying any available state or federal eligibility or income database.²⁶¹ The Commission asked for comment "on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program."²⁶²

96. To help ensure the integrity of the recertification process, we amend the Commission's rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another eligibility database. This rule change creates a more rigorous and verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. We also amend our rules to accommodate this process in the National Verifier.²⁶³ If the ETC is unable to re-certify the subscriber's eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in section 54.405(e)(4).²⁶⁴

97. Amending the Commission's rules to require this additional recertification step closes off another avenue for waste, fraud, and abuse within the Lifeline program by requiring additional documentation from subscribers whose eligibility was previously confirmed through an eligibility database but are no longer included in any eligibility database. This change balances the need to increase the integrity of the Lifeline program by ensuring that subscribers continue to demonstrate eligibility each year, with the limited burden of providing additional documentation only when the situation warrants it. The proposal is supported by state agency commenters, many of whom noted the importance of verifying

²⁶⁰ We decline to adopt TracFone's proposal to require ETCs to "hold back" a portion of claims, subject to an annual true-up, in an effort to reduce fraud. TracFone Comments at 50. We find that with the efforts to ensure subscriber eligibility in NLAD, along with the implementation of the new Lifeline Claims System, holdbacks are unnecessary and may instead contribute to administrative inefficiency in the Lifeline program. The Lifeline Claims System was implemented for the January 2018 data month and only allows ETCs to claim subscribers who are in the NLAD. ETCs enter "reason codes" indicating why the ETC is not claiming specific subscribers in the NLAD for a particular data month. See *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128, 128 (WCB 2018).

²⁶¹ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10508, para. 97; 47 CFR § 54.410(f)(2)(iii) (providing that "if the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in [section 54.410(d)]").

²⁶² *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10508, para. 97.

²⁶³ See 47 CFR § 54.410(f)(3)(iii).

²⁶⁴ 47 CFR § 54.410(f)(5).

eligibility in situations where a subscriber's eligibility cannot be determined through a check of a database.²⁶⁵ The National Lifeline Association and ETCs also note their support for the requirement.²⁶⁶

98. Some commenters express concern that this requirement would be burdensome for low-income subscribers because it would require them to produce additional documentation.²⁶⁷ Smith Bagley, Inc. (SBI) also argues that subscribers aged 60 years or older and residing on Tribal lands should be exempt from the requirement to produce additional documentation if their eligibility cannot be first determined through a database check.²⁶⁸ SBI contends that if such a customer can no longer be verified as a Medicaid participant in a database, "it is statistically likely that they also qualify via household income or [Supplemental Security Income]" because, among SBI's Lifeline customers aged 60 years or older, "approximately 39% qualified via household income compared to 12% of its entire Lifeline base."²⁶⁹ SBI contends that for this subset of subscribers, requiring the submission of eligibility documentation would be particularly burdensome because of mobility restrictions and other difficulties.²⁷⁰ We are cognizant of the burdens that providing additional documentation can have on some low-income consumers, including those over the age of 60, and so we have tailored the rule to only require supporting documentation when eligibility was confirmed through a database check, the subscriber is no longer

²⁶⁵ See Nebraska Public Service Commission Comments at 8-9 (arguing that even though "Lifeline subscribers may qualify under different eligibility programs at different times . . . eligibility should be determined by a database or documentation at the time of recertification"); Missouri Public Service Commission Comments at 10 ("Until the National Verifier can electronically verify eligibility, Lifeline subscribers should be required to periodically submit proof of eligibility"); Michigan Public Service Commission Comments at 11; Pennsylvania Public Service Commission Comments at 32-33 ("prohibiting self-certification as the FCC prescribes will counteract waste, fraud, and abuse"); cf. Public Utility Division of the Oklahoma Corporation Commission Comments at 12 (commenters "strongly urge the FCC to prohibit self-certification for ANY annual re-certifications, not just those associated with program changes").

²⁶⁶ See NaLA Comments at 91; NaLA Reply Comments at 30; USTelecom Comments at 7-8 ("USTelecom does not object to the Commission's proposal to prohibit subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their eligibility."); Letter from John J. Heitmann, Counsel to Boomerang Wireless, LLC d/b/a enTouch Wireless and AmeriMex Communications Corp d/b/a SafetyNet Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287, Attach. at 8 (filed Mar. 27, 2018) (enTouch Wireless and SafetyNet Wireless *Ex Parte*) ("Require proof of eligibility for annual recertification only when eligibility program changes"). In its comments, GCI asks that the Commission "not require existing subscribers to document their continued eligibility in the Lifeline program at every recertification." GCI Comments at 15. And Q Link argues that a requirement to have all Lifeline subscribers who no longer participate in the original qualifying program produce new proof of eligibility at recertification would be overbroad in situations where eligibility can be determined through a database. Q Link Comments at 16. We note that the changes we adopt today require a subscriber to provide proof of eligibility if the subscriber's eligibility was initially verified through an eligibility database and the subscriber's eligibility can no longer be verified through that database or a different eligibility database. It would not require documentation at every recertification unless the subscriber's eligibility cannot be determined through a check of an eligibility database.

²⁶⁷ Low-Income Consumer Advocates Comments at 21; Cities of Boston, Massachusetts; Los Angeles, California, and Portland, Oregon, and the Texas Coalition of Cities for Utility Issues Comments at 16-17 ("Low-income Americans often work multiple jobs, have limited access to information (thus the need for Lifeline), and may otherwise struggle to meet the administrative burdens placed upon them under this program The Cities urge the Commission to narrowly and with exacting precision adopt only those limited requirements absolutely and unequivocally necessary and whose potential harm is minimal or nonexistent.").

²⁶⁸ Letter from David A. LaFuria and Steven M. Chernoff, Counsel for SBI to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 2 (filed Sept. 27, 2019) (SBI *Ex Parte*).

²⁶⁹ *Id.* at 3, n.2.

²⁷⁰ *Id.* at 3.

included in that database, and eligibility cannot otherwise be verified through a check of another state or federal eligibility or income database.²⁷¹ Accordingly, we decline to implement SBI's suggestion that we permit Lifeline subscribers on Tribal lands over the age of 60 to self-certify their eligibility when they cannot otherwise be verified through a database. We recognize that it may be a challenge for some to submit documentation in accordance with this rule, but this yearly requirement balances the need to maintain the integrity of the Lifeline program while minimizing the burden on individual subscribers. We also decline to implement the recommendation of the Oklahoma Corporation Commission's Public Utility Division that we eliminate all self-certifications, as we find that the self-certification process at the time of recertification strikes a balance by limiting administrative burdens on program participants while still maintaining the integrity of the Lifeline program by enforcing a verifiable process by which to confirm eligibility.

99. We therefore amend section 54.410(f) of the Commission's rules to reflect these changes, and we direct USAC to update the recertification forms as necessary to reflect these changes. These changes shall be effective 90 days after announcement of OMB approval under the Paperwork Reduction Act. Any recertification initiated on or after the effective date must comply with the amended rules.

C. Risk-Based Auditing

100. We next modify the Lifeline program's audit requirements to better target potential non-compliance and reduce burdens on some ETCs. Participants in the Lifeline program are subject to substantial oversight and compliance reviews. With oversight from the Commission's Office of the Managing Director (OMD), USAC is responsible for conducting, either itself or through third parties, Beneficiary and Contributor Audit Program (BCAP) audits and Payment Quality Assurance (PQA) reviews of program participants.²⁷² More recently, USAC has conducted additional reviews as requested in the July 2017 Letter to USAC.²⁷³ Additionally, under the Commission's Biennial Audit framework, ETCs receiving \$5 million or more in reimbursements from the Lifeline program are required to obtain an independent audit that is intended "to assess the ETC's overall compliance with the program's requirements."²⁷⁴ In the *2017 Lifeline Order and Notice*, the Commission sought comment on its proposal to modify the Biennial Audit requirements from a \$5 million reimbursement threshold to a purely risk-based model.²⁷⁵

101. Finding that targeted tools are necessary to identify abusers of the program and to ensure that USAC's procedures are sufficient to properly administer the Lifeline program, we adopt a new approach that will use risk-based factors²⁷⁶—rather than the level of Lifeline disbursements—to identify

²⁷¹ NaLA contends that the rule as proposed in the *2017 Lifeline Notice* requires that all subscribers up for recertification submit supporting documentation. NaLA Comments at 91. This is an incorrect reading of the rule. The cross-reference to sections 54.401(b)(1)(i)(B) and (c)(1)(i)(B) makes clear that the supporting documentation is required "[i]f an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases" or "eligibility databases."

²⁷² *2012 Lifeline Order*, 27 FCC Rcd at 6779, para. 283, nn.785, 786, 788 (describing history of BCAP audits and PQA reviews); Agency Financial Report, Fiscal Year 2017, page 63, 72, (rel. Nov. 15, 2017), <https://www.fcc.gov/document/fy-2017-agency-financial-report>. USAC provides details about BCAP audits on its webpage at <https://www.usac.org/about/appeals-audits/beneficiary-and-contributor-audit-program-bcap/> (last visited Nov. 12, 2019) and information about the PQA reviews on <https://www.usac.org/about/appeals-audits/pqa-program/> (last visited Nov. 21, 2019).

²⁷³ See generally USAC, Appeals & Audits, <https://www.usac.org/lifeline/additional-requirements/appeals-audits/> (last visited Nov. 12, 2019); July 2017 Letter to USAC.

²⁷⁴ *2012 Lifeline Order and Notice*, 27 FCC Rcd at 6782, para. 292.

²⁷⁵ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10505, para. 86.

²⁷⁶ A risk-based approach takes into account "identified risks, emerging risks, as well as other internal and external factors that can influence the control environment." See GAO, A Framework for Managing Fraud Risks in Federal

ETCs that must complete Biennial Audits pursuant to section 54.420(a) of the Commission's rules. As one commenter argues, "the number of subscribers served by a provider," and thus the level of reimbursements made to the provider, "is not indicative of its risk profile."²⁷⁷ We agree that the amount of reimbursements should not be the only factor to consider in determining when a Biennial Audit is necessary under section 54.420(a). Accordingly, we direct USAC to develop and submit for approval by OMD and the Bureau a list of proposed risk-based factors that would trigger a Biennial Audit under section 54.420(a) of the Commission's rules in accordance with the guidance provided in the GAO's Yellow Book²⁷⁸ and the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control*.²⁷⁹ A risk-based approach for biennial audits will incorporate a wider range of risk factors that will better identify waste, fraud, and abuse in the program because these factors will target potential violations rather than only companies that happen to receive a certain level of Lifeline reimbursements.²⁸⁰ To ensure the efficient and effective implementation of the approach we adopt here, we direct OMD and the Bureau, in conjunction with USAC, to update the Biennial Audit Plan as necessary to reflect the changes made herein and otherwise implemented since the development and release of the last Biennial Audit Plan. Commenters generally welcome this move to a targeted, risk-based approach, noting that this approach will be much more effective at weeding out waste, fraud, and abuse than the current method.²⁸¹ The move also would likely result in cost savings for ETCs that were

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Programs, GAO-15-593SP, at 30 (July 2015), <https://www.gao.gov/assets/680/671664.pdf>. GAO issued the Framework to provide additional guidance for implementing requirements contained in Federal Internal Control Standards, improper-payment legislation, and OMB circulars.

²⁷⁷ Sprint Corp. Comments at 25; *But see* Q Link Comments at 17-18 (arguing that "the biennial audit requirement for entities that receive large amounts of Lifeline support should be maintained [because while] these audits can be burdensome, they provide ongoing assurance that large Lifeline providers are properly maintaining their books and records").

²⁷⁸ GAO, *The Yellow Book: Government Auditing Standards* (July 17, 2018 Revision), <https://www.gao.gov/products/GAO-18-568G>. The Yellow Book provides a framework for conducting high-quality audits with competence, integrity, objectivity, and independence. GAO, *The Yellow Book* <https://www.gao.gov/yellowbook/overview> (last visited July 31, 2019). We direct USAC to determine the appropriate version of the Yellow Book to follow as determined by the implementation guidance provided by the GAO in the 2018 version cited herein.

²⁷⁹ OMB, Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*. (July 2016) (A-123); *see also id.* Appendix C, Requirements for Payment Integrity Improvement (June 2018). OMB Circular A-123, together with all its appendixes, is available at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>. USAC should be mindful of the guidance in Appendix C advising that the development and execution of a payment recapture audit should involve utilizing known sources of improper payments, including: "statistical samples and risk assessments, agency post-payment reviews, prior payment recapture audits, Office of Inspector General reviews, Government Accountability Office reports, self-reported errors, reports from the public, audit reports, and the results of the agency audit resolution and follow-up process." OMB Circular A-123, Appendix C at 41.

²⁸⁰ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10505, paras. 85-86.

²⁸¹ Cox Communications, Inc. Comments at 5-6 ("[I]t appears to be inefficient to require all carriers receiving \$5 million in Lifeline support to continue to pay for audits at regular intervals if they have a clean track record of performance. A risk-based approach would better identify problems that are audits are intended to identify."); Michigan Public Service Commission Comments at 9; Missouri Public Service Commission Comments at 8 (noting that "this change should simplify an ETC's participation in the program without sacrificing accountability"); Public Utility Division of the Oklahoma Corporation Commission Comments at 10; Smith Bagley, Inc. Comments at 9-10; Low-Income Consumer Advocates Comments at 20; Minnesota Public Utilities Commission and the Minnesota Department of Commerce (Minnesota Agencies) Comments at 6-7; USTelecom Comments at 3-4; Florida Public Service Commission Comments at 5; CTIA Comments at 7-8; Verizon Comments at 6; National Lifeline Association Reply Comments at 21.

targeted simply due to their size.²⁸² Risk-based audits will direct resources to where they are needed more—the monitoring of providers that exhibit certain risk factors that warrant further investigation through an audit.

102. ETC commenters request that the Commission work with stakeholders in developing the risk register.²⁸³ While we appreciate ETCs’ interest in developing risk-based factors, it is important that the Commission receive recommendations from USAC, including any experts it may hire, based on standard methodologies for identifying risk-based factors and developing risk registers. As such, we decline to direct OMD or USAC to seek comment on the risk register from any particular stakeholders, but instead anticipate that OMD and the Bureau will direct USAC to use auditing best practices, including the GAO Yellow Book, for identifying risk-based factors and developing the recommendations for the risk register. We expect that such efforts by USAC to develop the risk register will follow relevant Federal guidance on evaluating and managing risk.²⁸⁴ We highlight that our approach here is designed to maintain the integrity of the audit process such that the risk register will serve its intended purpose of aiding in the detection and prevention of fraud, waste, and abuse in the program. We also note that the Commission already uses this approach for other Lifeline audit plans. For example, the FCC and USAC do not share the annual risk analyses used to select auditees pursuant to the Beneficiary and Contributor Audit Program. We further note that, pursuant to the guidance in OMB Circular A-123, it is within the Commission’s discretion to adopt an approach “that will ensure the greatest financial benefit for the government,”²⁸⁵ and we believe that this risk-based approach will do so by directing resources toward audits where instances of waste, fraud, and abuse are more likely to be revealed. Finally, the approach we adopt here will ensure that the development of the risk register will remain flexible so that USAC can adjust the risk register to meet any changes in the Lifeline program. These changes shall be effective 30 days after the publication of this Order in the Federal Register.

²⁸² Verizon Comments at 6 (noting that “[e]ach mandatory biennial audit costs Verizon...several hundred thousand dollars, including both the cost of the independent auditor and the cost of employee time for producing records and responding to auditor inquiries”); Cox Communications, Inc. Comments at 5-6 (noting that the cost of procuring outside audits for a company of its size is at least \$200,000 per audit); Public Utility Division of the Oklahoma Corporation Commission Comments at 10 (arguing that this approach might also “offer a savings in both time and money to those ETCs that run quality operations that do not raise risk concerns and can avoid or otherwise minimize the audit process that would otherwise apply under existing rules”).

²⁸³ USTelecom Comments at 4 (recommending that the Commission and USAC “be required to coordinate and collaborate with all stakeholders to develop these risk-based standards, so that there is no ambiguity for what actions/practices would be considered within and out of the scope of the new audit framework”); Sprint Corp. Comments at 25 (recommending that if the Commission adopts a risk-based system, “it must allow interested parties to participate in the process for identifying risk factors . . . and put a reasonable limit on the number of audits any service provider must undergo within a given time”). The City of New York also argues that while it supports efforts to effectively identify waste, fraud, and abuse in the Lifeline program, it cautions that “[e]liminating minimum standards and replacing mandatory biennial independent audits with an undefined and unspecified risk-based audit approach would increase the uncertainty of participating in the program and potentially reduce participation by providers.” City of New York Comments at 5.

²⁸⁴ See, e.g., 2017 GAO Report, Appendix I: Objectives, Scope and Methodology pages 68-73 (describing methodology to include review of academic material and interviews with divergent stakeholder groups). Additionally, we note that USAC has previously developed risk registers at both the enterprise-wide and program level using Enterprise Risk Management techniques. Agency Financial Report, Fiscal Year 2017, at 83 (rel. Nov. 15, 2017), <https://www.fcc.gov/document/fy-2017-agency-financial-report>. Moreover, USAC’s Compliance and Risk team also uses data analytics as part of its efforts to detect and prevent waste, fraud and abuse in the USF programs. *Id.* at 95. In our experience, auditors use a rigorous methodology when identifying risk.

²⁸⁵ OMB Circular A-123, Appendix C at 41.

IV. MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION

103. In this Memorandum Opinion and Order and Order on Reconsideration, we address several outstanding petitions to resolve pending questions pertaining to the rules and oversight of the Lifeline program and to provide clarity to program participants. We address USTelecom's petition for reconsideration and clarification of the *2016 Lifeline Order*; NASUCA's petition for reconsideration of the *2016 Lifeline Order*; the petitions of USTelecom and General Communication, Inc. (GCI) and the joint petition of NTCA—the Rural Broadband Association (NTCA) and WTA—Advocates for Rural Broadband (WTA) seeking reconsideration of the *2016 Lifeline Order*; NaLA's 2018 petition for declaratory ruling that the Commission allow ETCs to seek reimbursement for eligible subscribers during the non-usage cure period; and TracFone's 2012 petition for declaratory ruling and interim relief regarding actions taken by the Puerto Rico Telecommunications Regulatory Board to address duplicate Lifeline subscribers identified by the Board. For the reasons explained below, we partially grant the petitions of USTelecom and GCI and the joint petition of NTCA and WTA and we dismiss as moot or deny the other petitions.

A. ETC Service Obligations

104. Pending before the Commission is USTelecom's Petition for Reconsideration and Clarification of the *2016 Lifeline Order*.²⁸⁶ We first dismiss as moot USTelecom's requests that the Commission (1) extend the effective date for the requirement to offer Lifeline-supported broadband Internet access service,²⁸⁷ and (2) apply to non-Lifeline Broadband Providers²⁸⁸ the Commission's clarification that for Lifeline Broadband Providers, "media of general distribution" in section 214(e)(1)(B)'s advertising requirement means media reasonably calculated to reach "the specific audience that makes up the demographic for a particular service offering."²⁸⁹ The requirement to offer Lifeline-supported broadband Internet access service took effect on December 2, 2016.²⁹⁰ And in the accompanying Fifth Report and Order, we eliminate the Lifeline Broadband Provider category. As a result, the Commission's clarification concerning the advertising requirements for Lifeline Broadband Providers no longer applies to any ETC. Accordingly, we dismiss these requests as moot.

²⁸⁶ USTelecom Petition for Reconsideration and Clarification, WC Docket No. 11-42 et al. (filed June 23, 2016) (USTelecom Petition); *see also* Federal Communications Commission, Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, 81 Fed. Reg. 45447 (July 14, 2016) (setting deadlines for comments and reply comments on the USTelecom Petition).

²⁸⁷ USTelecom Petition at 7-9 (requesting that the Commission extend until the later of December 31, 2017 or 12 months after OMB approval of the order, the implementation date for the Lifeline-supported broadband Internet service obligation).

²⁸⁸ *Id.* at 23-24.

²⁸⁹ *2016 Lifeline Order*, 31 FCC Rcd at 4094, para. 364. The Commission's clarification concerning advertising requirements for Lifeline Broadband Providers reflected the greater flexibility in designating service areas for Lifeline Broadband Providers. *See id.* (stating that a Lifeline Broadband Provider offering Lifeline-supported broadband Internet access service to a school community could comply with the Lifeline advertising requirement by issuing "media of general distribution" in the school's geographic area); *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, Public Notice, 31 FCC Rcd 10927, 10931-32, para. 11 (WCB 2016).

²⁹⁰ *See, e.g., Wireline Competition Bureau Provides Guidance Regarding Filing Procedures for Eligible Telecommunications Carriers Seeking to Invoke Forbearance Granted by Lifeline Modernization Order*, Public Notice, 31 FCC Rcd 12672, 12672 (WCB 2016) ("Starting December 2, 2016, Lifeline-only ETCs and high-cost recipients are obligated to offer Lifeline-supported [broadband Internet access service] through their designated service areas, except to the extent they have elected to avail themselves of forbearance relief from the obligation to provide Lifeline-supported [broadband Internet access service].").

105. We next deny USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline stand-alone voice service.²⁹¹ USTelecom argues that this requirement is "arbitrary and capricious" and is inconsistent with the Commission's decision to shift Lifeline support from voice service to broadband Internet access service.²⁹² Two parties filed comments opposing USTelecom's request for reconsideration of this requirement.²⁹³

106. USTelecom's arguments do not warrant reconsideration of this requirement. The Commission adopted this requirement in the *2016 Lifeline Order*, notwithstanding its conclusion that the Lifeline program should transition to focus more on broadband Internet access services, after considering (1) the historical importance of voice service, (2) that consumer migrations to new technologies are not always uniform, and (3) that measures to continue addressing the affordability of voice service may still be appropriate consistent with the objectives of sections 254(b)(1), (b)(3), and 254(i) of the Act.²⁹⁴ Based on its consideration of these factors, the Commission concluded that, consistent with its "responsibility to be a prudent guardian of the public's resources," continued support for voice services should prioritize in an "administrable way, those areas where we anticipate there to be the greatest likely need for doing so," and that it made the most sense to provide any continued support for stand-alone voice to the last ETC serving the Census block.²⁹⁵ The Commission acknowledged that this support could be targeted in other ways (e.g., based on other geographies, or demographic criteria), but was not persuaded that these other approaches would be easily administrable.²⁹⁶ The Commission also determined that it made the most sense to provide this continued support to the single, existing ETC serving the Census block rather than requiring the designation of a new provider for this purpose.²⁹⁷

107. We find that the Commission's decision to require the last ETC serving a Census block to continue offering Lifeline-supported voice service is not inconsistent with the decision and supporting rationale for shifting Lifeline dollars from voice service to broadband Internet access service. As explained in the *2016 Lifeline Order*, the Commission adopted this requirement after considering a number of factors, including the objectives of section 254(b), and also narrowly tailored this approach to meet the needs of areas where the Commission anticipated the greatest likely need for addressing the affordability of stand-alone voice services.²⁹⁸ USTelecom has not demonstrated that the Commission erred in considering these factors or adopting a narrowly tailored solution to address them.

108. While USTelecom argues that the existence of one ETC does not correlate to the absence of multiple voice providers, and that the rates of non-ETC voice providers would not be higher in Census blocks where there is only one ETC, USTelecom's petition fails to provide any specific evidence to

²⁹¹ See USTelecom Petition at 12-15; see also 47 CFR § 54.403(a)(2)(v).

²⁹² USTelecom Petition at 13-14.

²⁹³ See, e.g., NASUCA Opposition to Petition for Reconsideration, WC Docket No. 11-42 et al., at 3 (filed July 29, 2016) ("USTelecom wrongly asks the FCC to relieve the last serving ETC of its obligation to offer 'supported services' which includes voice and broadband. Lifeline should continue to be available to make affordable voice as well as broadband service."); Greenlining Institute et al., Opposition to Petition for Reconsideration, WC Docket No. 11-42 et al., at 6-7 (filed July 29, 2016) (stating that USTelecom's request to eliminate this requirement "would allow providers to escape their obligation to offer Lifeline altogether" and that this and other requests "are nothing more than a reframing of carriers' arguments for a 'market-based' Lifeline program, which the Commission wisely rejected in its Order").

²⁹⁴ *2016 Lifeline Order*, 31 FCC Rcd at 4004, para. 119.

²⁹⁵ *Id.* at 4004, paras. 119-21 (citing *High-Cost Universal Service Support et al.*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010)).

²⁹⁶ *Id.* at 4004, para. 120.

²⁹⁷ *Id.* at 4004, para. 121.

²⁹⁸ *Id.* at 4003-4005, paras. 117-22.

support those arguments.²⁹⁹ USTelecom also has not demonstrated that the Commission erred in determining that focusing on Census blocks with one ETC was the most readily administrable approach, or that it made the most sense to require the single existing ETC already serving the Census block to continue to provide stand-alone Lifeline voice service. Accordingly, we deny USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue offering Lifeline standalone-voice service.

B. Backup Power

109. We next address a June 23, 2016, NASUCA petition for reconsideration of the *2016 Lifeline Order* arguing that, among other issues, the order did not “require that payment arrangements be offered for back-up power for Lifeline customers.”³⁰⁰ NASUCA requests that the Commission “at the very least require Lifeline ETCs to offer [Lifeline subscribers] extended payment plans for the back-up power option” or permit “back-up power [to] be provided at no additional cost to the Lifeline consumer.”³⁰¹ CenturyLink, GVNW and USTelecom opposed this portion of NASUCA's petition for reconsideration and argue that the Commission should reject or decline to consider NASUCA's back-up power proposals for Lifeline consumers.³⁰² We decline to grant NASUCA's request.

110. NASUCA's arguments concerning Lifeline support for backup power arrangements do not warrant reconsideration of the *2016 Lifeline Order*. NASUCA's petition does not point to any errors of fact or law in the *2016 Lifeline Order*. Instead, NASUCA's petition reprises the same arguments that NASUCA made in its comments responding to the *2015 Lifeline Notice and Order* and requests a change in the Commission's policies that would allow Lifeline support for backup power.³⁰³ The Commission's current rules do not require Lifeline providers to allow Lifeline consumers to make installment payments for backup power and do not provide Lifeline support for backup power options. This approach is

²⁹⁹ See USTelecom Petition at 13-14. The discussion in paragraphs 54 through 56 of the *2016 Lifeline Order* concerning the general availability of and declines in the cost of voice service does not foreclose the possibility of voice affordability issues in Census blocks with only one ETC.

³⁰⁰ NASUCA Petition for Reconsideration, WC Docket No. 11-42 et al., at 2 (filed June 23, 2016) (NASUCA Petition); see also Federal Communications Commission, Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, 81 Fed. Reg. 45447 (July 14, 2016) (setting deadlines for comments and reply comments on the Petition); NASUCA Reply to Oppositions to Petitions for Reconsideration, WC Docket No. 11-42 et al., at 5-6 (filed Aug. 8, 2016) (arguing same).

³⁰¹ NASUCA Petition at 5.

³⁰² CenturyLink Reply Comments on Petitions for Reconsideration, WC Docket No. 11-42 et al., at 8-9 (filed Aug. 8, 2016) (stating “CenturyLink agrees with USTelecom and GVNW that it is not necessary for the Commission to address the backup power payment suggestions” and that it would be unwise for the Commission to consider these proposals because “the Commission did not raise the issue of backup power in the notice of proposed rulemaking or propose any rules regarding it”); GVNW Consulting Inc. Opposition to Petitions for Reconsideration, WC Docket No. 11-42 et al., at 10 (filed July 29, 2016) (stating that the Commission should reject NASUCA's backup power proposals because “many customers do not see the need for back-up power since they have wireless battery-powered options,” and “funding backup-power would create a large, unnecessary, and continuing drain on the Lifeline portion of the Universal Service Fund”); USTelecom Opposition to Petitions for Clarification and Reconsideration, WC Docket No. 11-42 et al., at 7 (filed July 29, 2016) (stating that the Commission should reject NASUCA's backup power proposals because the Commission's order addressing continuity of 911 communications “comprehensively addressed back-up power requirements, including those relating to consumer costs” and that “there is no reason for the Commission to reconsider its careful and thorough consideration of back-up power issues in its earlier proceeding”).

³⁰³ See NASUCA Comments, WC Docket No. 11-42 et al., at 16-18 (filed Aug. 3, 2015) (requesting that the Commission require Lifeline providers to allow Lifeline customers to purchase backup batteries at cost or through installment plans). We note that while NASUCA's comments proposed backup power requirements for Lifeline customers, the *2015 Lifeline Notice and Order* did not mention backup power issues.

consistent with the Commission's determination in 2015 and 2016 that backup power is a matter of consumer choice and should be funded by individual consumers.³⁰⁴ Specifically, in the *Ensuring Continuity of 911 Communications Reconsideration Order*, the Commission recognized the importance of "ensur[ing] that all (including low-income) consumers have the ability to communicate during a power outage," but ultimately found that its previous conclusion that backup power is a matter of consumer choice to be funded by individual consumers "appropriately balanced competing interests in ensuring that consumers had the ability to purchase backup power."³⁰⁵ Given the Commission's prior, thorough consideration of backup power issues for all consumers, including low-income consumers, the fact that the *2016 Lifeline Order* does not adopt NASUCA's backup power proposals for Lifeline consumers does not warrant reconsideration of the *2016 Lifeline Order*.

C. Rolling Recertification

111. We next partially grant the petitions of USTelecom and GCI and the joint petition of NTCA and WTA (collectively, Petitioners) that request reconsideration of the 2016 decision to implement rolling recertification prior to the implementation of the National Verifier.³⁰⁶ Petitioners argue that the Commission failed to provide sufficient notice of the rule change prior to adoption in the *2016 Lifeline Order*. The Petitioners raise strong arguments that the logical outgrowth standard is not satisfied here. In light of the Petitioners' arguments and the desire to develop a full and complete record, we hereby grant the petitions for reconsideration as they apply to this discrete rule and reverse the rolling recertification requirement for ETCs pending disposition of the issues raised in the accompanying Further Notice.

112. In the *2016 Lifeline Order*, the Commission mandated rolling recertification, which required an ETC to recertify each Lifeline customer's eligibility every 12 months, as measured from the customer's service initiation date, except in states where the National Verifier, state Lifeline administrator, or other state agency conducts the recertification. The Commission found that this change would create administrative efficiencies while avoiding the imposition of undue burdens on providers, USAC, or the National Verifier.³⁰⁷ Previously, ETCs were simply required to annually certify the continued eligibility of subscribers, except for those in states where the state Lifeline administrator or other state agency conducts the recertification.³⁰⁸ In the *2015 Lifeline Notice*, the Commission sought comment on the National Verifier's role in the recertification process and other potential National Verifier functions, but did not propose or seek specific comment on changes to the recertification process in states

³⁰⁴ *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd 8677, 8680, 8697, paras. 9, 45-46 (2015) (*Ensuring Continuity of 911 Communications Order*); *Ensuring Continuity of 911 Communications*, Order on Reconsideration, 31 FCC Rcd 10131, 10134-37, paras. 1, 8-16 (2016) (*Ensuring the Continuity of 911 Communications Reconsideration Order*) (denying request for reconsideration of the Commission's conclusion that backup power should be a matter of consumer choice). NASUCA and other parties' petition for reconsideration of the *Ensuring Continuity of 911 Communications Order* raised, among other arguments, the concern that some consumers may lack funds for backup power solutions. See NASUCA et al., Petition for Reconsideration, PS Docket No. 14-174, at 9, 11, 12 (filed Nov. 16, 2015).

³⁰⁵ *Ensuring Continuity of 911 Communications Reconsideration Order*, 31 FCC Rcd 10134-35, at paras. 9, 12.

³⁰⁶ USTelecom Petition at 2-4; Petition for Reconsideration/Clarification of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42, et al., at 12-15 (filed June 23, 2016) (NTCA and WTA Petition for Reconsideration); and General Communication, Inc. (GCI) Petition for Reconsideration and/or Clarification, WC Docket No. 11-42, et al., at 4-11 (filed June 23, 2016) (GCI Petition for Reconsideration) (together, Petitioners); see also Federal Communications Commission, Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, 81 Fed. Reg. 45447 (July 14, 2016) (setting deadlines for comments and reply comments on the Petition).

³⁰⁷ *2016 Lifeline Order*, 31 FCC Rcd at 4115, para. 416.

³⁰⁸ *Id.*; 47 CFR § 54.410(f)(1) (2016). The current version of the rule, as adopted in the *2016 Lifeline Order*, became effective on January 1, 2017. FCC, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, 81 Fed. Reg. 67922 (Oct. 3, 2016).

where the National Verifier had not yet launched.³⁰⁹

113. Petitioners contend that the language of the *2015 Lifeline Notice* did not provide adequate notice, as required by the Administrative Procedure Act (APA), that the Commission was contemplating revising section 54.410(f)(1) to implement a rolling recertification requirement for providers before the National Verifier launched.³¹⁰ On reconsideration, we agree that the *2015 Lifeline Notice* did not explicitly notice the Commission's intent to require rolling recertification before the National Verifier launched.³¹¹ Although the APA does not require that the notice "specify every precise proposal which [the agency] may ultimately adopt as a rule"³¹² or that the final rule "be the one proposed in the NPRM,"³¹³ the final rule must be a "'logical outgrowth' of its notice."³¹⁴ A rule is considered a "logical outgrowth" of the Notice if a party should have anticipated that the rule ultimately adopted was possible.³¹⁵

114. Here, we agree that a party could not be expected to have anticipated that a Notice of Proposed Rulemaking seeking comment on the National Verifier's role in the recertification process would result in a rule requiring ETCs to recertify subscribers every 12 months as measured from each subscriber's service initiation date, even in states where the National Verifier has not launched.³¹⁶ Accordingly, we reverse, solely on notice grounds, the rolling recertification requirement on ETCs. As of the effective date of this Order, ETCs will not be required to complete recertification of a Lifeline customer's eligibility by the anniversary of that customer's service initiation date. Instead, the recertification process must merely be completed on an annual basis pursuant to the revised section 54.410(f)(1) of the Commission's rules.³¹⁷ We note that ETCs, USAC, and the National Verifier may continue to use a rolling recertification approach, as that would meet the requirement for annual

³⁰⁹ *2015 Lifeline Notice*, 30 FCC Rcd at 7851-52, para. 86.

³¹⁰ See NTCA and WTA Petition for Reconsideration at 13; GCI Petition for Reconsideration at 9; USTelecom Petition at 2-3; see also Sprint Corporation Comments, WC Docket No. 11-42, et al., at 8 (filed July 29, 2016) (arguing that the petitions for reconsideration should be granted); Opposition of Joint Lifeline ETC Respondents' Opposition to Petitions for Reconsideration, WC Docket No. 11-42, et al., at 15 (filed July 29, 2016) (supporting a delay of the transition to rolling recertification until the National Verifier is launched); Opposition to Petitions for Reconsideration GVNW Consulting, Inc., WC Docket No. 11-42, et al., at 3-4 (filed July 29, 2016) (supporting the Petitioners' claims that the Commission failed to adhere to the APA requirements when adopting the rolling recertification policy).

³¹¹ 5 U.S.C. §§ 553(b)-(c).

³¹² *Nuvio Corp. v. FCC*, 738 F.3d 302, 310 (D.C. Cir. 2006) (citing *Action for Children's Television v. FCC*, 564 F.2d 458, 470 (D.C. Cir. 1977)) (internal quotations and citations omitted).

³¹³ *Agape Church, Inc. v. FCC*, 738 F.3d 397, 411 (D.C. Cir. 2013).

³¹⁴ *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006).

³¹⁵ *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548; see also *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Order, FCC 18-64, para. 7 (May 22, 2018).

³¹⁶ See *2015 Lifeline Notice*, 30 FCC Rcd at 7851-52, para. 86; *2016 Lifeline Order*, 31 FCC Rcd 3962, 4115, paras. 416-18. While there was one filing in opposition to Petitioners' requests for reconsideration of the rolling recertification, the opposition did not address Petitioners' notice claims. See Consolidated Opposition of the Greenlining Institute, Center for Media Justice, Center for Accessible Technology, Media Alliance, 98.9 FM – the Southside Media Project, Appalshop, Art is Change, Free! Families, Rally for Emancipation and Empowerment, Generation Justice, Line Break Media, Martinez Street Women's Center, Open Access Connections, OVEC (Ohio Valley Environmental Coalition), People's Press Project, Prometheus Radio Project, St. Paul Neighborhood Network (SPIN), and Urbana-Champaign Independent Media Center to Petitions for Reconsideration and Clarification of CTIA, General Communication, Inc., Joint Lifeline ETC Petitioners, NCTA/WTA, TracFone, and USTelecom, WC Docket No. 11-42, et al., at 4-5 (filed July 29, 2016).

³¹⁷ See *infra* Appendix A; 47 CFR § 54.410(f)(1).

recertification.³¹⁸ Recertifications for all eligible Lifeline subscribers must be completed by the end of each calendar year, unless the requirement otherwise is waived by the Bureau or Commission. All other Commission guidance and rules with respect to the recertification process remain in effect.

D. Reimbursement Under the Usage Requirement

115. We next deny the Petition for Declaratory Ruling filed by NaLA asking the Commission to permit ETCs to seek reimbursement “for all Lifeline eligible subscribers served as of the first day of the month” pursuant to the Commission’s non-usage rules, “including those subscribers that are in an applicable 15-day cure period following 30 days of non-usage.”³¹⁹

116. In the *2012 Lifeline Order*, as a measure intended to reduce waste in the program, the Commission introduced a requirement that an ETC that did not assess and collect from its subscribers a monthly charge could not receive support for subscribers who had either not activated service, or who had not used the service within a consecutive 60-day period. In this way, ETCs would only receive support for eligible low-income subscribers who actually use the service.³²⁰ ETCs were also required to notify their subscribers of possible de-enrollment at the end of the 60-day period if the subscriber failed to use the Lifeline supported service during the next 30 days. In the *2016 Lifeline Order*, the Commission shortened the non-usage period from 60 to 30 days, along with a corresponding reduction in the time allotted for service providers to notify their subscribers of possible termination from 30 to 15 days.³²¹ Per this change, ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage and de-enroll the subscriber if, during the subsequent 15 days, the subscriber has not used the service.³²²

117. NaLA’s petition for declaratory ruling requested that the Commission permit Lifeline ETCs to seek reimbursement for all Lifeline subscribers served on the first day of the month, including those subscribers receiving free-to-the-end-user Lifeline service who are in the 15-day cure period per the Commission’s non-usage rules.³²³ NaLA states that USAC’s website changed its guidance from allowing reimbursement for Lifeline subscribers during the 15-day cure period of the non-usage rule to disallowing ETCs to claim reimbursement for subscribers during the 15-day cure period.³²⁴ NaLA further states that disallowing reimbursement for those subscribers enrolled during the 15-day cure period would be arbitrary and capricious because it ignores the language of section 54.407(a) and disregards ETCs’ “reasonable reliance on the initial guidance” provided by USAC.³²⁵ NaLA also asserts that disallowing reimbursement for subscribers in the 15-day cure period for non-usage potentially would constitute a regulatory taking without just compensation, in violation of the United States Constitution.³²⁶

³¹⁸ See 47 CFR § 54.410(f)(1) (2014). (providing that “All eligible telecommunications carriers must annually re-certify all subscribers except for subscribers in states where a state Lifeline administrator or other state agency is responsible for re-certification of subscribers’ Lifeline eligibility.”).

³¹⁹ See National Lifeline Association Petition for Declaratory Ruling, WC Docket No. 11-42 et al. (filed Feb. 7, 2018) (NaLA Non-Usage Petition); *Wireline Competition Bureau Seeks Comment on National Lifeline Association’s Petition for Declaratory Ruling*, Public Notice, 33 FCC Rcd 1262 (WCB 2018). The FCC’s non-usage rules only apply when an ETC offers “Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers.” See 47 CFR § 54.407(c).

³²⁰ See *2012 Lifeline Order*, 27 FCC Rcd at 6768-69, para. 257.

³²¹ See *2016 Lifeline Order*, 31 FCC Rcd at 4115, para. 415.

³²² See *id.*; 47 CFR § 54.405(e)(3).

³²³ See NaLA Non-Usage Petition. The Commission’s rules pertaining to non-usage are 47 CFR § 54.407(c)(2) and 47 CFR § 54.405(e)(3).

³²⁴ See NaLA Petition at 4.

³²⁵ *Id.*

³²⁶ See *id.*

118. SBI,³²⁷ Sprint Corporation,³²⁸ and Q Link Wireless³²⁹ all filed comments in support of NaLA's Petition. SBI states that the Lifeline rules "entitle SBI to reimbursement for all Lifeline customers it serves directly as of the first of the month" making "SBI entitled to reimbursement for a customer whose 'cure' period includes the snapshot date."³³⁰ It further states that nowhere do the rules require "SBI to go back after the end of the 'cure' period and return the Lifeline subsidy [because] there is nothing to return since SBI was providing service during that period."³³¹ Sprint states that "service providers incur significant costs for accounts in mandatory cure status" as that subscriber's account "remains active, and the service provider continues to incur the costs associated with an active account."³³² Both Sprint and SBI argue that inefficiencies result from an ETC not being able to claim a subscriber during the cure period but then filing for reimbursement if the subscriber ultimately ends up using the service during the cure period.³³³ Q Link reiterates NaLA's argument that mandating Lifeline service to subscribers in a cure period but prohibiting ETCs from claiming such subscribers would effect a regulatory taking.³³⁴

119. We deny NaLA's Petition requesting permission to seek reimbursement for subscribers who have not used the Lifeline supported service in 30 consecutive days. The non-usage rule states that an ETC offering free-to-the-end-user Lifeline service "shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days"³³⁵ ETCs are further obligated to provide a subscriber who has not used her or his service within those 30 days "15 days' notice . . . that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage."³³⁶ Read together, the plain language of the rules does not confer any right for the ETC to receive reimbursement during the 15-day cure period. The rules expressly state that ETCs can seek reimbursement only for subscribers who use their service within a consecutive 30-day period. The 15-day cure period serves as a notification to the subscriber that she must use her service, or it will be automatically terminated at the end of the 15 days. NaLA's argument that it should be able to seek support during the 15-day notice and cure period is intended effectively to extend the non-usage period by 50%.

120. We are not persuaded by NaLA's argument that we should grant the petition because it relied on informal staff guidance and USAC's website.³³⁷ Commission precedent is clear that carriers must rely on the Commission's rules and orders even in the face of conflicting informal advice or opinion from USAC or Commission staff.³³⁸ NaLA and others must rely on the plain language of the non-usage

³²⁷ See Smith Bagley, Inc. Comments, WC Docket Nos. 11-42 et al. (filed Mar. 12, 2018) (SBI Comment on NaLA Pet.).

³²⁸ See Sprint Corporation Comments, WC Docket Nos. 11-42 et al. (filed Mar. 12, 2018) (Sprint Comment on NaLA Pet.).

³²⁹ Q Link Wireless LLC Comments, WC Docket Nos. 11-42 et al. (filed Mar. 12, 2018) (Q Link Comment on NaLA Pet.).

³³⁰ SBI Comment on NaLA Pet. at 4.

³³¹ *Id.*

³³² Sprint Comment on NaLA Pet. at 2.

³³³ See *id.* at 3; SBI Comment on NaLA Pet. at 6.

³³⁴ See Q Link Comment on NaLA Pet. at 3.

³³⁵ 47 CFR § 54.407(c)(2).

³³⁶ 47 CFR § 54.405(e)(3).

³³⁷ See NaLA Non-Usage Petition at 3.

³³⁸ See, e.g., *Kojo Worldwide Corp.*, 24 FCC Rcd 14890, 14893, para. 6 ("The Commission has stated in the past that '[i]t is the obligation of interested parties to ascertain facts from Official Commission records and files and not

rules, as codified by the Commission, which state that ETCs will not be eligible to be reimbursed for those subscribers who are in a 15-day non-usage cure period regardless of whether the subscriber's 15-day cure period includes the snapshot date. Additionally, we note that a group of ETCs with at least some overlap with the current NaLA Petitioners acknowledged that the Commission's rules require ETCs to keep Lifeline subscribers enrolled in the program during the cure period without requesting reimbursement for that service.³³⁹

121. We also reject NaLA's argument that sections 54.407(a) and 54.407(c)(2) of the Commission's rules are inconsistent and in conflict. Section 54.407(c)(2) prohibits ETCs providing free-to-the-end-user Lifeline service from claiming support for subscribers who have not used their Lifeline service in the last consecutive thirty days or who have not cured their non-usage. While section 54.407(a) generally provides for the payment of reimbursements to ETCs for qualifying subscribers in the NLAD on the first day of the month, section 54.407(c)(2) places a specific restriction on the general rule declaring which subscribers an ETC can claim for reimbursement. The specific language in a rule prevails over more general language.³⁴⁰ Because the specific language of section 54.407(c)(2) provides a limitation on the general reimbursement rule of section 54.407(a) and also clearly states that an ETC "shall *only* continue to receive universal service support reimbursement" for subscribers who have used their service within a 30 consecutive day period,³⁴¹ it is not arbitrary for the Commission to determine that ETCs are not owed payment for the 15-day notification period required by section 54.405(c)(3) that falls beyond the 30-day non-usage period per the rule. We also note that the alternative to the 15-day cure period is to require an ETC to immediately de-enroll a subscriber from the Lifeline program on day 30 of non-usage, which would result in the subscriber's service being disconnected with no notice to the subscriber and would therefore be contrary to the public interest.

122. Finally, we disagree with NaLA's argument that requiring ETCs to provide uncompensated service during the 15-day cure period would violate the Takings Clause of the Fifth Amendment.³⁴² The Takings Clause prohibits the government from taking "private property . . . for public use, without just compensation."³⁴³ While NaLA's Petition does not elaborate on this argument, Q-Link explains that denying compensation during the 15-day cure period would effectively mandate that subscribers "be permitted physically to occupy portions of the ETC's network and airtime . . . without just compensation."³⁴⁴ There is a simple problem with this argument: Any actual use of an ETC's network—

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rely on statements or informal opinions by the staff."); *In Re Sullins Acad., Bristol, Virginia*, Order, 17 FCC Rcd 23829, para. 5 (WCB 2002) ("We decline to grant relief on the basis of incorrect advice from USAC. Commission precedent establishes that where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly where relief is contrary to a rule.").

³³⁹ See Wireless ETC Petitioners' Petition for Reconsideration and Clarification, WC Docket Nos. 11-42 et al., at 11 (filed Aug. 13, 2015) ("For those ETCs subject to the Commission's 60-day non-usage rule that use a 90-day process, subscribers remain actively enrolled during the 30-day 'cure' period, but that period is not reimbursable if the subscriber does not ultimately use the service."). At the time of the Wireless ETC Petitioners' filing, Commission rules established a non-usage period of 60 days and a cure period of 30 days. See 47 CFR § 54.405 (2014).

³⁴⁰ See, e.g., *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007) ("normally the specific governs the general").

³⁴¹ 47 CFR § 54.407(c)(2) (emphasis added).

³⁴² See NaLA's Non-Usage Petition at 9-10.

³⁴³ U.S. Const. Amend. V.

³⁴⁴ See Q Link Non-Usage Comments at 3. Q Link argued in its comments that *Bell Atlantic Telephone Cos. v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994), supports an argument that a regulatory taking has occurred. See Q Link Non-Usage Comments at 3, n.7. In *Bell Atlantic*, the court found a taking where the Commission's rules granted

(continued....)

even the sending of a single text message—would establish subscriber “usage,” entitling the ETC to reimbursement.³⁴⁵ In other words, the Commission’s rules deny compensation only where there is no use—and therefore, under Q-Link’s formulation, no physical occupation. Where there *is* actual use during this 15-day period, ETCs would receive compensation.

123. The potential taking, then, is merely the burden of providing a wholly unused service for fifteen days. While NaLA and other commenters provide no information on the weight of this burden, it is far from the kind of permanent condemnation of physical property that typifies a *per se* taking.³⁴⁶ Nor would it amount to a regulatory taking³⁴⁷: (1) The economic impact of a 15-day period of uncompensated service would be light³⁴⁸; (2) the rule would not upend any reasonable investment-backed expectation³⁴⁹; and (3) for the reasons explained above, any interference could not fairly be characterized as a “physical invasion by government,” notwithstanding Q-Link’s arguments to the contrary.³⁵⁰

124. For these reasons, we deny NaLA’s Petition. ETCs are not entitled to reimbursement during the 15-day cure period for a subscriber who has not used the service within 30 consecutive days unless the subscriber cures the non-usage, after which the ETC may seek reimbursement.

E. State Efforts to Eradicate Duplicate Claims

125. We next deny a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunications Regulatory Board (Board or TRB) to address duplicate Lifeline subscribers as identified by the Board.³⁵¹ The regulations and processes enacted by the Board to address duplicative Lifeline support in Puerto Rico were valid and not subject to preemption by the Commission. Specifically, we find that the Board was not required to adopt the interim procedures concerning duplicate Lifeline subscribers outlined in the Commission’s 2011 *Duplicative Payments Order*³⁵² because those procedures established a minimum set of requirements for USAC to use to address duplicate Lifeline subscribers that USAC identified through in-depth data validations and other similar audits.³⁵³ In addition, we find that the Board’s de-enrollment procedures did

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third-parties the “right to exclusive use of a portion of the petitioner’s central offices.” Unlike in *Bell Atlantic*, the Commission is not here commandeering private property for the use of a third-party competitor.

³⁴⁵ 47 CFR § 54.407(c)(2)(i)-(v).

³⁴⁶ *Cf. Loretto v. Teleprompter Manhattan City Corp.*, 458 U.S. 419, 427 (1982) (“When faced with a constitutional challenge to a permanent physical occupation of real property, this Court has invariably found a taking.”).

³⁴⁷ *See Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (establishing the three-factor test for regulatory takings).

³⁴⁸ None of the ETCs supporting this petition has quantified the “economic impact of the regulation.”

³⁴⁹ *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 227 (1986) (“Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.”) (quoting *FHA v. The Darlington, Inc.*, 358 U.S. 84, 91 (1958)).

³⁵⁰ *See, e.g., id.* at 225 (“This interference with the property rights of an employer arises from a public program that adjusts the benefits and burdens of economic life to promote the common good and, under our cases, does not constitute a taking requiring Government compensation.”).

³⁵¹ TracFone Emergency Petition for Declaratory Ruling and for Interim Relief, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (filed Feb. 22, 2012) (TracFone Petition); *see also Comment Sought on TracFone Wireless, Inc. Emergency Petition for Declaratory Ruling and Interim Relief*, Public Notice, 27 FCC Rcd 2133 (WCB 2012).

³⁵² *Lifeline and Link-Up Reform and Modernization*, Report and Order, 26 FCC Rcd 9022 (2011) (*Duplicative Payments Order*).

³⁵³ In the *Duplicative Payments Order*, section 54.405(e) of the Commission’s rules was revised to read, “Notwithstanding subsections 54.405(c) and (d) of this section, upon notification by the Administrator to any ETC in any state that a subscriber is receiving Lifeline service from another eligible telecommunications carrier and

(continued....)

not conflict with or serve as an obstacle to the de-enrollment procedures adopted by the Commission and, as a result, were not subject to preemption.³⁵⁴ We also note that many of the policy concerns raised by TracFone and commenters³⁵⁵ concerning the Board's process have either been addressed by (1) changes the Board made to its duplicate policies and procedures soon after TracFone's petition was filed,³⁵⁶ (2) the fact that the Board filed a request to opt out of the NLAD in November 2012, or (3) the fact that the NLAD now conducts duplicate checks for Puerto Rico subscribers following the Bureau's 2015 grant of Puerto Rico's request to opt into the NLAD.³⁵⁷

126. According to TracFone's Petition, the Board sent letters to TracFone and several other ETCs in January and February 2012 together with a list of duplicate subscribers, and instructed the ETCs to de-enroll these subscribers by a specified date.³⁵⁸ TracFone argues that the Board letters instructing

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should be de-enrolled from participation in that ETC's Lifeline program, the ETC shall de-enroll the subscriber from participation in that ETC's Lifeline program within 5 business days." 47 CFR § 54.405(e) (2011). In addition, the administrative procedures the Bureau outlined for use by USAC in accordance with the *Duplicative Payments Order* were intended for use in instances where USAC, not the state, identified duplicates. See Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to D. Scott Barash, Acting Chief Executive Officer, USAC, 26 FCC Rcd 8588, 8590, 8592 (WCB 2011) (*June 2011 Guidance Letter*).

³⁵⁴ The doctrine of federal preemption arises from the Supremacy Clause of the U.S. Constitution, which provides that federal law is the "supreme Law of the Land." U.S. Const. Art. VI, cl. 2; see *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368 (1986). Courts have found that valid agency regulations will preempt any state or local law that conflicts with or frustrates the purpose of such regulations. See, e.g., *City of New York v. FCC*, 486 U.S. 57, 64 (1988). In the Commission's *Duplicative Payments Order*, the Commission stated, "To the extent that existing state de-enrollment procedures applicable to the federal Lifeline program are in conflict with or serve as an obstacle to implementation of the de-enrollment procedures we adopt herein, they would be preempted." *Duplicative Payments Order*, 26 FCC Rcd at 9031, para. 17.

³⁵⁵ See TracFone Petition at 3-4, and 9; NASUCA Comments on TracFone Petition at 7; Sprint Comments on TracFone Petition at 2; Consumer Groups Comments on TracFone Petition at 1; PR Wireless Reply Comments on TracFone Petition at 4-5, 10.

³⁵⁶ For example, while commenters raised concerns regarding consumers not having service for an extended period of time as a result of the Board's policies, the Board later revised its policies to minimize loss of service to consumers identified as duplicates, including changes in 2012 that "initially reduced this ineligibility period to one year, then to four months, and then, after finding that most of the affected residents were receiving multiple benefits because of the improper conduct by ETCs, eliminated the period altogether," and allowed for "a customer who had been receiving multiple benefits [to] remain with the service to which the subsidy was first applied." Board Comments on TracFone Petition at 13; Board Reply Comments on TracFone Petition at 2. The Board also had an appeals process under which "any resident who receives notice that it risks losing multiple Lifeline benefits can seek reconsideration at the Board and explain why they should be allowed to continue receiving multiple benefits." Board Comments on TracFone Petition at 3.

³⁵⁷ See Request of Puerto Rico Telecommunications Board to Withdraw its Opt Out Petition for the National Lifeline Accountability Database, WC Docket No. 11-42 (filed Dec. 18, 2013); *Lifeline and Link up Reform and Modernization*, WC Docket No. 11-42, Order, DA 15-1243 (rel. Nov. 3, 2015) (granting Puerto Rico's request to opt-into the NLAD). When the Board filed a petition to opt out of the NLAD in 2012, the Board submitted detailed information about its duplicate checking processes, which included a description of its dispute resolution and appeals processes. See Telecommunications Regulatory Board of Puerto Rico's Petition to Opt Out of the National Lifeline Accountability Database, WC Docket No. 11-42 (filed Nov. 30, 2012) at 10, 11-12. That Petition was automatically granted after ninety days, in accordance with the *2012 Lifeline Order*. See *2012 Lifeline Order*, 27 FCC Rcd at 6752, para. 221; *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of the National Lifeline Accountability Database*, Public Notice, 27 FCC Rcd 12321, 12324 (WCB 2012). Subsequently, when Puerto Rico opted into the NLAD, the Board ceased using its own duplicate checking processes and began relying on the NLAD to identify duplicates.

³⁵⁸ TracFone Petition at 2-3.

ETCs to de-enroll the consumers violate (1) the intent of section 254(b)(3) of the Communications Act, which establishes as a core principle the goal that consumers in all regions of the Nation, “including low-income consumers,” have access to affordable telecommunications services,³⁵⁹ and (2) the rules and procedures governing de-enrollment of “duplicates” established by the Commission on an interim basis in 2011 and those later adopted on a permanent basis in 2012.³⁶⁰ TracFone argues that the Board should be required to adopt the Industry Duplicate Resolution Process outlined by the Commission in its 2011 *Duplicative Payments Order*.³⁶¹ TracFone also points to the opt-out process outlined in the *2012 Lifeline Order*,³⁶² which codified a permanent approach for addressing duplicates in the federal rules, and argues that the Board did not follow this process,³⁶³ and that the Board’s process has the potential to leave residents without service, in violation of the *2012 Lifeline Order*.³⁶⁴ Finally, TracFone requests that the Commission issue an order concluding that the directives to ETCs contained in the Board’s letters are unlawful and preempted.³⁶⁵

127. Multiple commenters filed in support of TracFone’s Petition, agreeing that the Commission should issue a declaratory ruling and arguing that the Board’s actions directing TracFone and other ETCs to de-enroll duplicate subscribers were unlawful, contrary to universal service program policy and inconsistent with federal procedures.³⁶⁶ NASUCA, in its comments, also recommended that the Commission issue a ruling (1) that Puerto Rico consumers who are eligible for Lifeline be allowed to

³⁵⁹ *Id.* at 5 (citing 47 U.S.C. § 254(b)(3)).

³⁶⁰ *Id.* at 10.

³⁶¹ The Industry Duplicate Resolution Process proposal was submitted by a group of Lifeline ETCs and interested industry representatives as a near-term approach for resolving duplicate claims. Under this proposal, a consumer would be notified that he or she had been identified as receiving Lifeline support from multiple providers and would have 30 days to select a single provider. Under the IDPR, an ETC would be required to immediately de-enroll a subscriber when notified by USAC that the subscriber was receiving duplicative support, but the subscriber would be permitted to retain one Lifeline subscription. The Commission directed the Bureau to work with USAC to implement a process consistent with the Industry Duplicate Resolution Process to address duplicate claims. *Duplicative Payments Order*, 26 FCC Rcd 9029.

³⁶² *2012 Lifeline Order*, 27 FCC Rcd 6656.

³⁶³ TracFone Petition at 8.

³⁶⁴ *Id.* at 3-4 and 9.

³⁶⁵ *Id.* at 10. In its reply comments, TracFone also objected to a \$10,000 fine adopted by the Board to be assessed on ETCs per instance of duplication. TracFone Wireless, Inc. Reply Comments, WC Docket Nos. 11-42 et al. (filed March 19, 2012) (TracFone Reply Comments on TracFone Petition) at 6. As discussed herein, the Board has authority to establish regulations associated with the ETCs it designates as eligible for Lifeline reimbursement in Puerto Rico.

³⁶⁶ Letter from Darlene R. Wong, Staff Attorney, National Consumer Law Center; Ellis Jacobs, Senior Attorney, Advocates for Basic Legal Equality; Michael R. Smalz, Senior Attorney, Ohio Poverty Law Center; Melissa W. Kasnitz, Legal Counsel, Center for Accessible Technology; Jennifer Brandon, Executive Director, Community Voice Mail National; Marcy Shapiro, Executive Director, Open Access Connections; Irene E. Leech, President, Virginia Citizens Consumer Counsel; amalia deloney, Associate Director, Center for Media Justice; Linda Sherry, Director, National Priorities Consumer Action; Harry S. Geller, Executive Director, Pennsylvania Utility Law Project; Allen Cherry, Senior Attorney, Low Income Utility Advocacy Project; Timothy J. Funk, Utility Consumer Advocate, Crossroads Urban Center, and Stephanie Chen, Senior Legal Counsel, The Greenling Institute (collectively the Consumer Groups) to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (March 9, 2012) (Consumer Groups Comments on TracFone Petition) at 1; The National Association of State Utility Consumer Advocates (NASUCA) Comments, WC Docket Nos. 11-42 et al. (filed March 9, 2012) (NASUCA Comments on TracFone Petition) at 3-8; PR Wireless, Inc. d/b/a Open Mobile Reply Comments, WC Docket Nos. 11-42 et al. (filed March 19, 2012) (PR Wireless Reply Comments on TracFone Petition) at 6-8, 10.

maintain one Lifeline service per household, even if they had received duplicate Lifeline service previously, and (2) clarifying that states that operate their own systems for identifying duplicates are required, as a condition of opting out of the federal duplicate resolution process, to include safeguards to allow eligible consumers to receive one Lifeline service per household.³⁶⁷

128. Several commenters point to the duplicates resolution measures adopted by the Commission and raise concerns that the Board process for addressing duplicates deviates from the process the FCC outlined in the 2011 *Duplicative Payments Order*, the 2012 *Lifeline Order*, and the *June 2011 Guidance Letter*.³⁶⁸ NASUCA, for example, argues the Commission should clarify that state systems that opt out of following the federal approach must include both the functional capabilities and safeguards equivalent to those administered by USAC.³⁶⁹ Sprint and PRTC argue that the Board should adopt the FCC's processes and procedures.³⁷⁰ Sprint, PRTC, and T-Mobile point to the need for nationwide consistency in addressing the duplicates issue.³⁷¹ PR Wireless agrees with Tracfone that the Board's processes are inconsistent with federal procedures.³⁷² Several commenters raise concerns that the process established by the Board will result in consumers being barred from receiving service for an extended period of time (from four months to a year) if they are determined to be receiving service from more than one carrier.³⁷³ One commenter also raises concerns regarding how the Board was addressing situations where there are multiple households at a single address.³⁷⁴

129. The Commission has taken a number of important steps to create robust processes and procedures to address the issue of duplicative Lifeline support. In the Commission's *Duplicative Payments Order*, the Commission clarified that qualifying low-income consumers may receive no more than a single Lifeline benefit and established the requirement that an ETC, upon notification from USAC, de-enroll any subscriber that is receiving multiple benefits in violation of that rule.³⁷⁵ The Commission also directed the Bureau to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims that was consistent with the proposed Industry Duplicate Resolution Process submitted by a group of ETCs.³⁷⁶ This was intended as an interim process, "while the Commission considers more comprehensive resolution of this and other issues raised in the 2011 Lifeline and Link Up

³⁶⁷ NASUCA Comments on TracFone Petition at 2. The Consumer Groups expressed their support for acting on NASUCA's requests. Consumer Groups Comments on TracFone Petition at 4.

³⁶⁸ See, e.g., PR Wireless Reply Comments on TracFone Petition at 6-8. PR Wireless argues that "[t]he TRB makes no attempt to explain how the incidence of Lifeline duplicates in Puerto Rico is so different from the situation in the rest of the country that it justifies the draconian approach described above." PR Wireless Reply Comments on TracFone Petition at 5.

³⁶⁹ NASUCA Comments on TracFone Petition at 8.

³⁷⁰ Sprint Comments on TracFone Petition at 3; Puerto Rico Telephone Company, Inc. Reply Comments, WC Docket Nos. 11-42 et al (filed Mar. 19, 2012) (PRTC Reply Comments on TracFone Petition).

³⁷¹ T-Mobile USA, Inc. Comments, WC Docket Nos. 11-42 et al (filed March 9, 2012) (T-Mobile Comments on TracFone Petition) at 1 and 4; Sprint Nextel Corporation Comments, WC Docket Nos. 11-42 et al. (filed March 9, 2012) (Sprint Comments on TracFone Petition) at 2; PRTC Reply Comments on TracFone Petition at 3.

³⁷² PR Wireless Reply Comments on TracFone Petition at ii, 2, and 10.

³⁷³ NASUCA Comments on TracFone Petition at 7; Sprint Comments on TracFone Petition at 2; Consumer Groups Comments on TracFone Petition at 1; PR Wireless Reply Comments on TracFone Petition at 4-5, 10.

³⁷⁴ PRTC Reply Comments on TracFone Petition at 3-4.

³⁷⁵ *Duplicative Payments Order*, 26 FCC Rcd at 9026, para. 7.

³⁷⁶ Concurrent with the release of the *Duplicative Payments Order*, the Bureau released the *June 2011 Guidance Letter*, which outlined the process USAC should use to identify and resolve duplicative Lifeline subscribers. See *June 2011 Guidance Letter*.

NPRM.³⁷⁷ Then, in 2012, the Commission adopted a number of Lifeline program reforms and codified a more permanent approach to address duplicative support.³⁷⁸ Specifically, in the *2012 Lifeline Order*, the Commission created and mandated the use by ETCs of the NLAD with specified features and functionalities designed to ensure that multiple ETCs do not seek and receive reimbursement for the same subscriber.³⁷⁹

130. We find that the Board's actions did not run afoul of our rules or the Act. Under section 254(f) of the Telecommunications Act of 1996, "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."³⁸⁰ In addition, "[a] State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."³⁸¹ In the 2011 *USF/ICC Transformation Order*, the Commission stated that section 254(f) permitted states to impose additional reporting requirements as long as they "do not create burdens that thwart achievement of the universal service reforms set forth in this Order."³⁸² We conclude the Board's policies and procedures did not rely on or burden Federal universal service support mechanisms. In fact, the Board's policies were assisting the Federal universal service program by addressing the Lifeline duplicates issue, consistent with the overall objectives of the 2011 *Duplicative Payments Order* and were being undertaken and implemented using the Board's own resources. The Board is responsible for regulating telecommunications services in Puerto Rico. In accordance with statutes adopted by the Puerto Rico General Assembly, the Board has a mandate to "preserve and promote universal service through predictable, specific and sufficient support mechanisms"³⁸³ and to ensure that the Lifeline subsidy is limited to "a single wireless telephone line or to a single wireless service for the family unit."³⁸⁴ It was with this mandate in mind that the Board took action to address duplicate Lifeline recipients after the Board became aware that this was a significant concern in Puerto Rico. According to the Board, based on a review of information it had requested from ETCs on a quarterly basis, "the Board became aware of many cases where the subscribed participants were receiving the service from more than one carrier."³⁸⁵

131. The actions of the Board were not in conflict with our rules and thus did not trigger the criteria for federal preemption. When the Board sent the letters to TracFone concerning duplicate Lifeline subscribers in January and February of 2012, only the Commission's interim procedures established in the 2011 *Duplicative Payments Order* were in effect. The rule regarding de-enrollment adopted in the 2011

³⁷⁷ *Duplicative Payments Order*, 26 FCC Rcd at 9026, para. 7.

³⁷⁸ *2012 Lifeline Order*, 27 FCC Rcd at 6656.

³⁷⁹ *Id.* at 6735, para. 182.

³⁸⁰ 47 U.S.C. § 254(f).

³⁸¹ *Id.*

³⁸² *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform--Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, at 17850-17851, para. 574 (2011) (*USF/ICC Transformation Order*).

³⁸³ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42 et al (filed Mar. 9, 2012) (Board Comments on TracFone Petition) at 1, referencing 27 L.P.R.A. § 269e(a)(1).

³⁸⁴ Board Comments on TracFone Petition at 1 (referencing 27 L.P.R.A. § 269e(d)(3)).

³⁸⁵ *Id.* at 7.

Duplicative Payments Order specified that, “upon notification by the Administrator to any ETC” that a subscriber is already receiving Lifeline service from another ETC, “the ETC shall de-enroll the subscriber from participation in that ETC’s Lifeline program within 5 business days.”³⁸⁶ The policy adopted by the Board, however, did not relate to duplicates identified by the Administrator but, rather, to those duplicates identified *by the Board*. The Board regulations specified that the Board would identify duplicates and that ETCs would have no more than 10 working days (from the date the Board duplicates notice was sent) to notify consumers they were ineligible for the service.³⁸⁷ The Board also adopted other policies related to duplicates, but these policies did not conflict with or serve as an obstacle to the Commission’s rules.³⁸⁸ While the Commission stated in its 2011 *Duplicative Payments Order* that “these new rules would apply to ETCs in all states, regardless of that state’s status as a federal default state or a non-default state,”³⁸⁹ the 2011 *Duplicative Payments Order* did not explicitly bar states from imposing their own policies and procedures, unless such regulations were “in conflict with or serve[d] as an obstacle to implementation of the de-enrollment procedures” adopted in the 2011 *Duplicative Payments Order*.³⁹⁰ We find the Board’s policies were neither in conflict with nor an obstacle to implementation of the Commission’s 2011 *Duplicative Payments Order* procedures.

132. Indeed, we find that the Board’s process was consistent with the overall approach that the Bureau directed USAC to follow in the *June 2011 Guidance Letter*. There, the Bureau directed USAC, in cases where the duplicate subscriber was the same individual at the same address, to identify duplicative subscribers and notify ETCs, identify a “default ETC,” and notify subscribers that they had 35 days to either choose a provider or begin receiving service from only the default provider. After the 35-day timeframe, USAC was directed to notify the provider regarding the subscribers that should be de-enrolled.³⁹¹ The Board process enabled consumers to appeal the Board decision regarding their duplicate status and, as later amended, also enabled subscribers to continue to receive service “with the service to which the subsidy was first applied.”³⁹² As a result, the Board process allowed subscribers to dispute the Board’s findings and continue to receive service while also addressing the duplicates issue, which was in line with the overall approach the Bureau recommended for USAC to follow.³⁹³

133. TracFone’s claims that the Board failed to make the required opt-out filing (claims which were made before the opt-out deadline occurred) are not accurate. At the time the Board sent the letters to TracFone concerning duplicate Lifeline subscribers, the Commission’s changes in the *2012 Lifeline*

³⁸⁶ 45 CFR § 54.405(e).

³⁸⁷ See Associated Free State of Puerto Rico, Puerto Rico Telecommunications Regulatory Board, Provisional Amendments to the Regulations on Universal Service (Board Provisional Amendments) at 14.9a, attached to Board Comments on TracFone Petition as Exhibit A. The Board Provisional Amendments were adopted on July 13, 2011 and the federal rules adopted in the *Duplicative Payments Order* became effective on July 29, 2011.

³⁸⁸ For example, the Board Provisional Amendments state that in the case of duplication in one same family unit, the oldest beneficiary will retain the subsidy. Board Provisional Amendments at 14.9c. The Board also adopted a policy that a person found to be a duplicate would be deemed ineligible for one year and if committing the same action again could be permanently ineligible. Board Provisional Amendments at 14.9a. The Board subsequently revised these policies, allowing that a customer who had received multiple benefits could remain with the service to which the subsidy was first applied. Board Comments on TracFone Petition at 13. The Board also outlined an appeal process allowing consumers 20 days to appeal a finding of ineligibility. Board Provisional Amendments at 14.9d.

³⁸⁹ See *Duplicative Payments Order*, 26 FCC Rcd at 9031, n.62.

³⁹⁰ *Id.* at 9031, para. 17.

³⁹¹ *June 2011 Guidance Letter*, 26 FCC Rcd at 8591.

³⁹² Board Comments on TracFone Petition at 2 and 13.

³⁹³ *Id.*

Order to adopt more permanent duplicate procedures and establish the NLAD, and permit states to opt out of the NLAD, were not yet in effect.³⁹⁴ In the *2012 Lifeline Order*, the Commission approvingly acknowledged that some states had already developed their own systems to check for duplicative Lifeline support, stating its intent not to inhibit state progress.³⁹⁵ The Commission also clarified that “[w]e allow states to opt-out of the duplicates database requirements outlined in this Order if they certify one time to the Commission that they have a comprehensive system in place to check for duplicative federal Lifeline support that is as *at least as robust* as the processes adopted by the Commission and that covers all ETCs operating in the state and their subscribers.”³⁹⁶ In October 2012, the Bureau issued a public notice outlining the process states must follow to opt out of the NLAD.³⁹⁷ The Board made a filing with the Commission seeking to opt out of the NLAD and the duplicates resolution process in November 2012 in which the Board described the system and processes it had in place to check for duplicative Lifeline support.³⁹⁸ Therefore, TracFone’s claims that the Board failed to make the required opt-out filing are not accurate. For all of these reasons, we deny TracFone’s petition.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

134. Finally, we seek comment on continuing to improve the operation and oversight of the Lifeline program. We seek comment on adding the goal of increasing broadband adoption for consumers who would not otherwise subscribe to broadband as one of the Lifeline program’s goals. We also seek comment on making additional program integrity improvements to the program and establishing privacy training requirements for entities accessing personal information in the NLAD.

A. Program Goals and Metrics

135. In the *2017 Lifeline Order*, we concurred with the GAO and past Commissions that outcome-based performance goals and measures would help to achieve Congress’s universal service goals.³⁹⁹ We now seek comment on whether the Lifeline program’s current goals adequately reflect the importance of measuring the program’s impact on adoption and continued connectivity,⁴⁰⁰ and how the program’s goals can be improved.

136. *Increasing Broadband Adoption Among Consumers.* We seek comment on adding a new goal to the program: increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to broadband. We believe that broadband adoption, and the impact it will have on closing the digital divide, should be a focus of the Lifeline program. Increasing broadband adoption as a goal will help to ensure that Lifeline funds are appropriately targeted toward bridging the digital divide. To achieve this goal, we will need to accurately evaluate the impact of Lifeline funds on broadband adoption.

137. We first seek comment on our authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not subscribe to broadband. Is such a goal a component of preserving and advancing universal service, as directed by section 254(b) of the

³⁹⁴ 47 CFR § 54.404, the rule pertaining to the NLAD Database and state opt out, became effective April 2, 2012. See 77 Fed. Reg. 12968.

³⁹⁵ *2012 Lifeline Order*, 27 FCC Rcd at 6752, para. 221.

³⁹⁶ *Id.*

³⁹⁷ *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of the National Lifeline Accountability Database*, Public Notice, 27 FCC Rcd 12321 (WCB 2012).

³⁹⁸ Telecommunications Regulatory Board of Puerto Rico Petition to Opt Out of the National Lifeline Accountability Database, WC Docket No. 11-42 et al. (filed Nov. 30, 2012).

³⁹⁹ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10519-20, para. 132; 2017 GAO Report at 16-19.

⁴⁰⁰ See also Citizens Against Government Waste Comments at 11; National Hispanic Media Coalition Comments at 33.

Act?⁴⁰¹ How would this goal relate to the principles of promoting the availability of quality services at just, reasonable, and affordable rates⁴⁰² and promoting access to reasonably comparable telecommunications and information services for low-income consumers?⁴⁰³

138. We next seek comment on the appropriate method of measuring broadband adoption by low-income consumers. As GAO noted in its report, the current structure of the Lifeline program “ma[kes] it difficult for the [C]ommission to determine causal connections between the program and the number of individuals with telephone access.”⁴⁰⁴ We seek to alter that structure as it relates to broadband, to ensure that Lifeline funds are being used effectively to help close the digital divide by encouraging broadband adoption by households that otherwise would not subscribe to the supported service, and we seek comment on the best way to accomplish this.

139. We seek comment on the best data sources to help measure adoption progress. We propose asking Lifeline applicants questions in the enrollment process regarding how the program has impacted their broadband adoption, and we seek comment on what those specific questions should be. For example, should the Commission ask Lifeline applicants whether they already subscribe to voice or broadband service, and whether they would be able to afford their Lifeline-supported service without the Lifeline discount? Should we also add questions to determine whether the Lifeline program is effectively reaching specific demographics, like veterans or households with children?

140. Instead of or in addition to seeking information directly from Lifeline applicants, what other methods and data can we explore to determine the impact of the Lifeline benefit on broadband adoption? Should we rely on other Commission reports or data sources? For purposes of this goal, how should the Commission identify low-income consumers or areas if other Commission reports or data sources are used? We also seek comment on how best to measure the impact of Lifeline on broadband adoption to the groups of consumers described above.

141. When determining whether the program’s goals are being met, should our evaluation consider fixed and mobile broadband services differently? In the annual report required by section 706 of the Act,⁴⁰⁵ the Commission reports data on fixed and mobile broadband separately and recognizes variations in speed and other characteristics.⁴⁰⁶ How should our consideration of this goal for the Lifeline program be impacted by the similarities and differences between fixed and mobile broadband?

142. When measuring broadband adoption, we propose examining the effectiveness of the Lifeline program by recognizing that Lifeline-supported broadband Internet access service and some other forms of broadband Internet access service are, to various extents, substitutable. For example, some Lifeline consumers may value broadband access so highly that they would purchase some level of broadband service even in the absence of a Lifeline benefit. Other consumers who currently use a Lifeline-supported broadband Internet access service would prefer to not purchase broadband Internet access service (or purchase broadband access intermittently) without Lifeline support. Finally, some consumers currently do not subscribe to any broadband Internet access service at all. In this context, how can the Commission identify, measure, and analyze the effect of the Lifeline program on increasing broadband adoption? Is the degree of substitution between Lifeline-supported and unsupported broadband Internet access service affected by the characteristics of Lifeline service (such as download speeds, data caps, etc.) of the Lifeline-supported broadband Internet access service? We also seek

⁴⁰¹ See 47 U.S.C. § 254(b).

⁴⁰² See 47 U.S.C. § 254(b)(1).

⁴⁰³ See 47 U.S.C. § 254(b)(3).

⁴⁰⁴ 2017 GAO Report at 17.

⁴⁰⁵ 47 U.S.C. § 1302(b).

⁴⁰⁶ 2018 *Broadband Deployment Report*, 33 FCC Rcd at 1666-67, para. 18.

comment on additional criteria to consider as we evaluate the program's impact on broadband adoption.

B. Additional Program Integrity Recommendations

143. In the *2017 Lifeline Order*, the Commission sought comment on potential changes that would help eliminate waste, fraud, and abuse within the Lifeline program,⁴⁰⁷ many of which we are adopting today. We also propose additional requirements that will help the Commission, and ETCs, achieve that goal. First, we propose requiring ETCs to upload their internal customer account numbers into the NLAD in order to help USAC match its records with those of the ETC. Second, we propose requiring ETCs and the National Verifier to record and retain a Lifeline applicant's eligibility proof number and the type of proof the applicant used to qualify for the program. We also propose requiring ETCs to provide the NLAD or National Verifier with access to the same data maintained by the ETC, including non-usage data and the time the customer enrolled. We also seek comment on the best ways to ensure that consumer usage is accurately measured and defined.

1. Internal Customer Account Numbers

144. When examining data to determine if improper payments were made, USAC often needs to examine an ETC's data. However, the internal number that an ETC uses to identify a subscriber in its own service and billing records is currently not entered into the NLAD. As a result, it may be difficult for USAC or enforcement authorities, such as the Commission, the U.S. Department of Justice, or state public service commissions, to compare an ETC's records with USAC's NLAD or reimbursement records because it can be difficult to locate an individual subscriber's records. Accordingly, we propose amending section 54.404(b) of the Commission's rules to require ETCs to submit their internal customer account numbers into the NLAD when enrolling or recertifying subscribers. We conclude that this will facilitate examination of relevant data, and therefore help to eliminate waste, fraud, and abuse. We seek comment on this proposal including its costs and benefits.

2. Eligibility Proof Number and Type

145. We also seek comment on improving the information collected during the process of manually reviewing eligibility documentation for those applicants whose eligibility cannot be confirmed by an automated data source. In 2016, the Commission determined that a provider had been using "temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name,"⁴⁰⁸ and repeatedly used the same program eligibility card to enroll multiple applicants.⁴⁰⁹ We believe that requiring ETCs and the National Verifier to track both the eligibility proof number and the type of eligibility proof will enable both ETCs and the National Verifier to quickly determine if improper enrollment techniques are being used. We therefore propose amending sections 54.404(b) and 54.410(d) of the Commission's rules to require that where the applicant provides eligibility documentation, ETCs and the National Verifier shall collect and record the identification number or card number indicated on the eligibility documentation (e.g., the SNAP card number or Medicaid card number) and the type of eligibility proof used by an applicant to demonstrate eligibility for the Lifeline program. This proposal would not apply where an applicant's eligibility is verified through an automated database. We seek comment on this proposed requirement, including its costs and benefits.

3. Demonstrating Compliance with Usage Requirements

146. We seek comment on ways to ensure the accuracy of ETCs' claims that subscribers are actually using their broadband Internet access service on an ongoing basis.⁴¹⁰ Our current usage rules

⁴⁰⁷ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10506-10, paras. 90-101.

⁴⁰⁸ *Total Call Mobile Consent Decree*, 31 FCC Rcd at 13211, para. 13.

⁴⁰⁹ *Id.*

⁴¹⁰ 47 CFR § 54.407(c)(2).

require subscribers receiving a free-to-the-end-user Lifeline service to use the service every 30 days by, among other ways, using broadband data. Given this requirement, would it be possible for an ETC to evade our 30-day usage requirement by installing an application (“app”) on a user’s phone that would “use” data without any action by the user?⁴¹¹ Even if such data usage would not meet the requirement that qualifying usage be “undertaken by the subscriber,” we are concerned that it would be difficult to differentiate legitimate subscriber usage from ETC-arranged data usage that happens without the knowledge or direction of the subscriber in an audit or enforcement investigation. Could an ETC thus fabricate usage data to continue claiming support for a Lifeline subscriber who is no longer using the service?

147. We seek comment on how the Commission could amend its rules to address this vulnerability. Would requiring subscribers to periodically contact USAC remedy this issue? Would requiring subscribers to use an app to confirm continued usage be a sufficient and user-friendly solution? What would such an app look like, and how could the Commission ensure that such an app would not “use” data without any activity from the user? The other types of “usage” under our rules all require an affirmative act by the user,⁴¹² and we seek comment on what other options would guarantee that “usage of data” is understood to mean “usage of data initiated by the Lifeline subscriber.” Does the Commission have the authority to prohibit ETCs from installing an app that “uses” data without direction from the subscriber? We also seek comment on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage. We also seek comment on the costs of these proposals and on how to minimize the burden on consumers and ETCs of verifying legitimate monthly usage.

148. We also seek comment on amending section 54.417 of the Commission’s rules to clarify an ETC’s obligation to maintain records that document compliance with the usage requirement.⁴¹³ The current rule requires ETCs to “maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.”⁴¹⁴ While this rule already applies to the usage requirement in sections 54.405(e)(3) and 54.407(c) of the Commission’s rules, we seek comment on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended rule 54.417 to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is “undertaken by the subscriber,” and not by the ETC, as the Commission’s rules require?⁴¹⁵ What are the costs and benefits of specifically requiring ETCs to maintain detailed data usage records, which could be examined to reveal any trends that reveal indications of potential usage fabrication (for example, an account that only uses data once every 30 days, at 2:00 a.m.)? Should such usage data be maintained for the same general timeframe as other compliance documentation under section 54.417? In adopting such a requirement, how can the Commission best safeguard Lifeline subscribers’ privacy? For example, should the Commission require certain security practices for the collection, retention, and management of this information, or are existing ETC security and privacy practices sufficient in this regard?

4. De-enrollment Process

149. We next seek comment on amending section 54.405(e)(1) of the Commission’s rules to clarify ETCs’ obligation to act promptly to notify subscribers when the ETC has reason to believe that the

⁴¹¹ 47 CFR § 54.407(c)(2)(i).

⁴¹² 47 CFR § 54.407(c)(2)(i)-(v).

⁴¹³ See 47 CFR § 54.417(a).

⁴¹⁴ *Id.*

⁴¹⁵ See 47 CFR § 54.407(c)(2).

subscriber is not eligible for the Lifeline program. Currently, the rule provides the subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate her eligibility.⁴¹⁶ However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period once it has reason to believe the subscriber is not eligible for the Lifeline benefit. We seek comment on implementing a firm deadline to ensure that ETCs do not unreasonably delay in sending the 30-day notice. Should we amend section 54.405(e)(1) to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day de-enrollment notice be sufficient? We also seek comment on how this rule should apply to states in which the National Verifier has launched. In those states, should the ETC instead be required to notify the National Verifier of its reason to believe that the subscriber is not eligible, upon which notice the National Verifier can conduct any necessary outreach and de-enrollments?

150. We also seek comment on amending section 54.405 of the Commission's rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Fund.⁴¹⁷ Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from the NLAD, pursuant to an ETC's request or a program integrity review, under its authority as administrator or the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

5. Distribution of Free Handsets

151. Lifeline providers often offer a free handset with the activation of Lifeline service.⁴¹⁸ Many of the ETCs offering free handsets also provide Lifeline service that is free to the subscriber where there is no regular billing relationship between the subscriber and the ETC.⁴¹⁹ Often the device is handed directly to the consumer at enrollment without requiring any payment by the consumer, and this practice has been the subject of reports that focus on ineligible consumers enrolling in Lifeline. For example, undercover local news teams have reported that they were able to obtain a free cell phone even when the undercover reporter was not eligible for the Lifeline service.⁴²⁰ In the *2017 Lifeline Order and Notice* and in response to Lifeline stakeholder suggestions, the Commission asked whether it should prohibit Lifeline

⁴¹⁶ See 47 CFR § 54.405(e)(1).

⁴¹⁷ See 47 CFR §§ 54.702(a), 54.707(a).

⁴¹⁸ See, e.g., TruConnect, <https://www.truconnect.com/> (last visited July 17, 2019); Q Link Wireless, <https://qlinkwireless.com/> (last visited July 17, 2019); Life Wireless, <https://www.lifewireless.com/> (last visited July 17, 2019); Assist Wireless, <https://www.assistwireless.com/qualify-for-lifeline/> (last visited July 17, 2019); Assurance Wireless, <https://www.assurancewireless.com/> (last visited July 7, 2019).

⁴¹⁹ See, e.g., TruConnect, <https://www.truconnect.com/> (last visited July 17, 2019); Q Link Wireless, <https://qlinkwireless.com/> (last visited July 17, 2019); Life Wireless, <https://www.lifewireless.com/> (last visited July 17, 2019); Assist Wireless, <https://www.assistwireless.com/> (last visited July 22, 2019); Assurance Wireless, <https://www.assurancewireless.com/> (last visited July 17, 2019).

⁴²⁰ CBS Denver, Government's Free Phone Program Riddled with Abuse, Fraud (Nov. 6, 2014), <http://denver.cbslocal.com/2014/11/06/governments-free-phone-program-riddled-with-abuse-fraud/> (last visited July 31, 2019); CBS Denver, FCC Commissioner 'Outraged' At What CBS4 Investigation Revealed About Free Phone Program (July 20, 2015), <http://denver.cbslocal.com/2015/07/20/fcc-commissioner-outraged-at-what-cbs4-investigation-revealed-about-free-phone-program/> (last visited July 31, 2019).

providers from distributing handsets in person.⁴²¹ We now ask for further focused comment on the practice of in-person distribution of free handsets and its possible role in encouraging ineligible Lifeline customers to attempt to enroll in the program.

152. In response to the *2017 Lifeline Order and Notice*, some commenters argue that in-person distribution of free handsets benefits low-income and vulnerable Lifeline customers, such as those that are homeless or otherwise displaced.⁴²² Others note that banning in-person free handset distribution “would be well worth the program’s substantial gain in controls and, in turn, credibility that would result from implementation of this measure”⁴²³ While we do not suggest that every ETC that distributes free handsets in this manner is engaging in or encouraging fraudulent behavior, our oversight experience suggests that the practice encourages ineligible consumers to attempt to enroll in Lifeline. We seek comment on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program.

153. We seek comment on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in-person at enrollment. How prevalent is the in-person distribution of free handsets today? Is this practice primarily associated with free-to-the-end-user Lifeline plans? Would such a restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline? Does the promise of an immediate free phone along with a free service provide improper incentives to potential subscribers?⁴²⁴ The Lifeline program currently does not provide support for equipment used with the supported service. Does the Commission have the statutory authority to prohibit ETCs from distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs?

154. Does the long-standing restriction on using the Lifeline subsidy for equipment support a new requirement that all Lifeline subscribers must pay a fee for the cost of the handsets used to provide the supported service? What are the costs and benefits of such a requirement? Would delaying the distribution of free handsets, or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee, help eliminate fraud within the program? Would such requirements discourage participation in the program by eligible subscribers? What would be the impact on broadband adoption if Lifeline subscribers had to pay a fee in exchange for a handset? What sources of data or industry studies could be helpful to estimate the magnitude of these effects? How should we evaluate the savings to the Universal Service Fund from

⁴²¹ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10510, para. 101. Since 2013, TracFone has urged the Commission to adopt a prohibition on the in-person distribution of free handsets. Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 17-287 et al., Attach. B. (filed Nov. 9, 2017). TracFone has similarly advocated for the prohibition of in-person distribution of free handsets in the course of other *ex parte* presentations. See, e.g., Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1. (filed Feb. 17, 2017); see also TracFone Petition for Reconsideration, WC Docket 11-42, et al, at 2 (filed June 23, 2016). TracFone Petition for Rulemaking, WC Docket No. 11-42, et al., at 6 (filed May 13, 2013) (2013 TracFone Petition for Rulemaking). We note that TracFone, subsequently reversed its position and has incorporated live handset activations and in-person distribution in its Lifeline enrollment procedures. TracFone Comments at 47.

⁴²² See, e.g., NaLA Comments at 98.

⁴²³ ITTA – The Voice of America’s Broadband Providers Comments at 4.

⁴²⁴ See Comments of the Community Action Partnership, Consumer Action, Maryland CASH Campaign, the National Association of American Veterans, Inc., and the National Consumers League, WC Docket No. 11-42 at 2 (filed June 17, 2013) (noting its support for TracFone’s petition and noting that prohibiting in-person distribution of free handsets “would both prevent and detect abuses while ensuring that wireless Lifeline-supported service remains for those that qualify.”); Free State Foundation Comments, WC Docket No. 11-42 at 3 (filed June 17, 2013) (arguing that “allowing carriers to distribute handsets in person in real time to prospective Lifeline customers makes it more difficult for the carrier to perform the requisite verification to certify eligibility for Lifeline support in accordance with FCC requirements”).

reduced waste, fraud, and abuse against the lower consumer benefits to Lifeline subscribers who would no longer subscribe because of an increased cost to the customer? Would a charge for the handset ensure that the carriers are providing handsets that customers value? Would the potential program integrity and consumer benefits of requiring ETCs to charge Lifeline subscribers for handsets distributed in person outweigh any potential burdens to ETCs and Lifeline subscribers?

155. We recognize that many other activities, such as in-person training on how to use the handset, occur between the ETC and the subscriber at enrollment. How would limitations on the distribution of free handsets impact these other activities?⁴²⁵ Are there other changes that could be made to this practice that would eliminate opportunities for fraud while ensuring that customers have access to affordable handsets?

156. The Commission and USAC have made a number of important changes to the Lifeline program and its administrative systems to reduce waste, fraud, and abuse, including a duplicate check with the NLAD and implementation of the National Verifier to make eligibility determinations. Has the implementation of the NLAD and recent changes to the Lifeline rules (including the requirement to retain eligibility documents) reduced the opportunities for fraud that were associated with the distribution of free handsets? Will the National Verifier further reduce the opportunities for fraud associated with this practice? Do any of these program or system changes reduce the risk of problems associated with in-person distribution of free handsets and obviate any need to require ETCs to charge a fee for receiving a handset at an in-person enrollment or for the Commission to place other restrictions on this practice?

157. In 2012, the Commission eliminated a rule requiring that ETCs charge Tribal Lifeline customers a minimum of \$1 per month.⁴²⁶ The Commission acknowledged that while the rule had specified the minimum charge, carriers were not required to collect the amount from customers, and some did not.⁴²⁷ What lessons should the Commission learn from the now eliminated \$1 minimum service charge for Tribal Lifeline customers? If the Commission were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers? How would we design any such requirement to address that risk?

158. We further note that, in the *2017 Lifeline Order and Notice*, the Commission sought comment on whether it should impose a maximum discount level for Lifeline services, which would require customers to pay a portion of the costs of the supported service.⁴²⁸ There, the Commission proposed to adopt a maximum discount level as a way to further reduce waste, fraud, and abuse in the program. The Commission reasoned that under the current model where providers offer “free-to-the-end-user” Lifeline service, “service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service.”⁴²⁹ Would requiring that ETCs charge

⁴²⁵ See NaLA Reply Comments at n.113 (noting that SBI’s “observation about ‘proper training for handset use underscores the point NaLA made in its comments that “in-person enrollment and handset distribution provides a vital consumer education touchpoint, giving eligible Lifeline subscribers the opportunity to ask questions about how to use the device and service, understand the eligibility criteria and program rules, and make informed choices and enrollment certifications”); see also NaLA Comments at 99; SBI Comments at 13.

⁴²⁶ *2012 Lifeline Order*, 27 FCC Rcd at 6774, paras. 269-70.

⁴²⁷ *Id.*; see also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas, et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12230-34, paras. 42-47 (2000) (*2000 Lifeline Order*) (establishing a \$1 minimum monthly Lifeline rate for qualifying customers on Tribal lands).

⁴²⁸ *2017 Lifeline Order and Notice*, 32 FCC Rcd at 10512-15, paras. 112-17.

⁴²⁹ *Id.*, 32 FCC Rcd at 10513-14, para. 114.

Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Alternatively, would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

C. Certifying Privacy Protection Efforts

159. We seek comment on two issues that we expect would address open recommendations made by the Commission's Office of Inspector General (OIG) following its review of USAC's NLAD implementation in 2018.⁴³⁰ The first is a recommendation to require ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. We believe that such a training and certification requirement would reduce the possibility that Lifeline subscribers' personal information would be accessed, used, or disclosed inappropriately. In response to a second recommendation from the Commission's OIG, we seek comment on whether state commissions and ETCs conduct background investigations of their staff that access USAC's systems, the nature of those investigations, and whether the Commission should require that state commissions and ETCs certify that they complete such investigations.

160. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards regarding how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program.⁴³¹ The Commission has not, however, specifically required ETCs and state agencies to train their personnel regarding appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees and enrollment representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of those data.⁴³² We therefore propose and seek comment on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training.

161. Outside of the Lifeline context, Commission rules governing customer proprietary network information (CPNI) already require telecommunications carriers to "train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place."⁴³³ Additionally, telecommunications carriers must have an officer annually certify a carrier's compliance with the Commission's CPNI rules.⁴³⁴ In considering a training and certification requirement for entities with NLAD and National Verifier access, we seek comment on the sufficiency of an ETC's CPNI certification to cover the effective training of their staff accessing these systems. We also seek comment on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not

⁴³⁰ See Federal Communications Commission Office of Inspector General, Semiannual Report to Congress October 1, 2017 – March 31, 2018 at 22 (2018), https://transition.fcc.gov/oig/FCC_OIG_SAR_03312018.pdf (announcing the completion of the OIG's review of USAC's NLAD implementation).

⁴³¹ *2012 Lifeline Order*, 27 FCC Rcd at 6745, para. 207; *2016 Lifeline Order*, 31 FCC Rcd at 4017-18, para. 154.

⁴³² We note that the FCC and USAC, as part of the FCC's compliance with the Federal Information Security Modernization Act of 2014 (FISMA), are required to provide privacy training to their employees, including advanced training for employees whose job responsibilities involve handling personal information. See National Institute of Standards and Technology, Security and Privacy Controls for Federal Information Systems and Organization, Special Publication 800-53, revision 4, Appx. J (including Privacy Control No. AR-5, "Privacy Awareness and Training"), <https://csrc.nist.gov/publications/detail/sp/800-53/rev-4/final>.

⁴³³ 47 CFR § 64.2009(b).

⁴³⁴ See 47 CFR § 64.2009(e).

adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? Further, we seek comment on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, enrollment representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier.

162. We also seek comment on the availability of existing privacy training resources for state agencies that have access to personal data in the NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ?

163. We also seek comment on how a privacy training and certification requirement, if any, should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct its own? We propose requiring ETCs and state agencies to certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees and enrollment representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and we seek comment on this approach.

164. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, we seek comment on a proposal to require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. Do state commissions and ETCs already complete background investigations for staff members with access to NLAD or the National Verifier? Do state commissions and ETCs conduct similar investigations for agents, contractors, and other non-employees that might handle Lifeline subscriber data and interact with NLAD or the National Verifier? How are these investigations documented, and would providing written confirmation to USAC of these investigations be feasible and reliable? We also seek comment on the burdens of such a requirement beyond the steps that state commissions and ETCs may already be taking. Would those burdens be outweighed by reduced waste, fraud, and abuse in the Lifeline program?

VI. SEVERABILITY

165. All of the actions taken by the Commission in this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking are designed to work in unison to make voice and broadband services more affordable to low-income households and to strengthen the efficiency and integrity of the Lifeline program's administration. However, each of the separate Lifeline reforms we undertake in this Fifth Report and Order, Memorandum Opinion, and Order and Order on Reconsideration serves a discrete function. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

VII. PROCEDURAL MATTERS

166. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁴³⁵ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Fifth Report and Order, and Memorandum Opinion and Order and Order on Reconsideration. The FRFA is set forth in Appendix C.

⁴³⁵ See 5 U.S.C. § 604. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

167. *Paperwork Reduction Act Analysis.* This Fifth Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁴³⁶ the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

168. *Congressional Review Act.* The Commission has determined, [and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs] that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

169. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended,⁴³⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Further Notice of Proposed Rulemaking (Further Notice), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. The IRFA is in Appendix D. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴³⁸ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴³⁹

170. *Initial Paperwork Reduction Act Analysis.* This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

171. *Ex Parte Rules – Permit-But-Disclose.* The proceeding this Further Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁴⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

⁴³⁶ See 44 U.S.C. § 3506(c)(4).

⁴³⁷ See 5 U.S.C. § 603.

⁴³⁸ See 5 U.S.C. § 603(a).

⁴³⁹ See *id.*

⁴⁴⁰ 47 CFR §§ 1.1200 *et seq.*

Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

172. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

173. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.⁴⁴¹ These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CYA257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

174. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

VIII. ORDERING CLAUSES

175. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 214, 254, and 403, and section 1.2 of the Commission's rules, 47 CFR § 1.2, this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed

⁴⁴¹ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Rulemaking, IS ADOPTED and shall take effect thirty (30) days after publication of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking in the Federal Register, except to the extent provided herein and expressly addressed below.

176. IT IS FURTHER ORDERED, that Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the publication of the text or summary thereof in the Federal Register, except for the amendments to section 54.406(b), which shall be effective (60) days after publication of the text or summary thereof in the Federal Register; section 54.406(a), which shall be effective (90) days after publication of the text or summary thereof in the Federal Register; and sections 54.404(b)(12) and 54.410(f), which involves Paperwork Reduction Act burdens and shall become effective (90) days after announcement in the Federal Register of OMB approval.

177. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and Clarification filed by United States Telecom Association on June 23, 2016 is GRANTED IN PART, DISMISSED IN PART and DENIED IN PART to the extent described above.

178. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration filed by National Association of State Utility Consumer Advocates on June 23, 2016 is DENIED to the extent described above.

179. IT IS FURTHER ORDERED that, pursuant to authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, the Petition for Declaratory Ruling filed by National Lifeline Association on February 7, 2018 is DENIED.

180. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that the Emergency Petition for Declaratory Ruling and For Interim Relief filed by TracFone on February 22, 2012 is DENIED to the extent described above.

181. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and Clarification filed by NTCA – The Rural Broadband Association - and WTA – Advocates for Rural Broadband - on June 23, 2016 is GRANTED IN PART to the extent described above.

182. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and/or Clarification filed by General Communication, Inc. on June 23, 2016 is GRANTED IN PART to the extent described above.

183. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

184. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, Further and Notice of Proposed Rulemaking including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

1. Amend § 54.201 to remove paragraph (j).
2. Amend § 54.202 to remove paragraphs (d)(1)-(3) and (e).
3. Amend § 54.205 to remove paragraph (c).
4. Amend § 54.400 to add paragraph (p) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(p) Enrollment Representatives: An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Universal Service Administrative Company or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment.

5. Amend § 54.404 to revise paragraph (b)(3) and to add paragraph (b)(12) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

* * * * *

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d), that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may be collected by the eligible telecommunications carrier prior to initial enrollment, but the certification shall not be recorded in the Database unless the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

* * * * *

(12) An eligible telecommunications carrier must not enroll or claim for reimbursement a prospective subscriber in Lifeline if the National Lifeline Accountability Database or National Verifier cannot verify the identity of the subscriber or the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

6. Add § 54.406 to subpart E to read as follows:

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) Enrollment representative registration. An eligible telecommunications carrier must require that enrollment representatives register with the Universal Service Administrative Company before the

enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, eligible telecommunications carriers must require that all enrollment representatives must provide the Universal Service Administrative Company with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

(i) Accessing the National Lifeline Accountability Database;

(ii) Accessing the National Verifier;

(iii) Accessing any Lifeline eligibility database; and

(iv) Completing any Lifeline enrollment or recertification forms.

(2) Eligible telecommunications carriers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Lifeline subscribers, recertify Lifeline subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Eligible telecommunications carriers must ensure that enrollment representatives shall regularly recertify their status with the Universal Service Administrative Company to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Eligible telecommunications carriers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(4) Enrollment representatives are not required to register with the Universal Service Administrative Company if the enrollment representative operates solely in a state that has been approved by the Commission to administer the Lifeline program without reliance on the Universal Service Administrative Company's systems. This exemption will not apply to any part of a state's administration of the Lifeline program that relies on the Universal Service Administrative Company's systems.

(b) Prohibition of commissions for enrollment representatives. An eligible telecommunications carrier shall not offer or provide to enrollment representatives or their direct supervisors any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier.

7. Amend § 54.407 to revise paragraph (a) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month. Eligible telecommunications carriers operating in a state that has provided the Commission with an approved valid certification pursuant to section 54.404(a) of this subpart must comply with that state administrator's process for determining the number of subscribers to be claimed for each month, and in those states Universal Service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier based on that number of actual qualifying low-income customers, according to the state administrator or other state agency's process.

8. Amend § 54.410 to revise paragraphs (f) and (g) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(f) * * *

(1) All eligible telecommunications carriers must annually re-certify all subscribers, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) * * *

* * * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the eligible telecommunications carrier must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the eligible telecommunications carrier must obtain both an Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the process. Eligible telecommunications carriers must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms.

* * * * *

(3) * * *

* * * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the National Verifier, state Lifeline administrator, or state agency must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the National Verifier, state Lifeline administrator, or state agency must obtain both an approved Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the certification process. Entities responsible for re-certification under this section must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms, or where the National Verifier Recertification Form is required.

* * * * *

(g) *One-Per-Household Worksheet.* If the prospective subscriber shares an address with one or more existing Lifeline subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule upon initial enrollment. Eligible telecommunications carriers must fulfill this requirement

using the Household Worksheet, as provided by the Wireline Competition Bureau. Where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline enrollment forms, eligible telecommunications carriers may use those forms in place of the Commission's Household Worksheet. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to § 54.410(d)(3)(vi), then the subscriber must complete a new Household Worksheet. Eligible telecommunications carriers must mark subscribers as having completed a Household Worksheet in the National Lifeline Accountability Database if and only if the subscriber shares an address with an existing Lifeline subscriber, as reported by the National Lifeline Accountability Database.

9. Amend § 54.420 to revise paragraph (a) to read as follows:

§ 54.420 Low income program audits

(a) *Independent audit requirements for eligible telecommunications carriers.* Eligible telecommunications carriers identified by USAC must obtain a third-party biennial audit of their compliance with the rules in this subpart. Such engagements shall be agreed upon performance attestations to assess the company's overall compliance with rules and the company's internal controls regarding these regulatory requirements.

(1) Eligible telecommunications carriers will be selected for audit based on risk-based criteria developed by USAC and approved by the Office of Managing Director and the Wireline Competition Bureau.

* * * * *

APPENDIX B
Proposed Rules

1. Amend § 54.404 to revise paragraph (b) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

* * * * *

(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's Social Security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number; the type of documentation and associated identification number used to demonstrate eligibility, if applicable; the telephone number associated with the Lifeline service; the ETC's internal account number or identification number associated with that subscriber; subscriber non-usage information; identity of the enrollment representative; time the subscriber was enrolled; the date on which the Lifeline service was initiated; the date on which the Lifeline service was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline.

* * * * *

2. Amend § 54.405 to revise paragraph (e) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

De-enrollment generally. If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, within five business days the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

* * * * *

3. Amend § 54.410 to revise paragraph (d) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(d) * * *

* * * * *

(2) * * *

* * * * *

(vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits, the subscriber's associated identification number, and the type of documentation the subscriber is submitting to demonstrate participation in that program, if necessary; and

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2017 Lifeline Notice* in WC Docket Nos. 17-287, 11-42, and 09-197.² The Commission sought written public comment on the proposals in the *2017 Lifeline Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Final Rules.

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.⁴ The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.⁵ On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁶ Since the *2012 Lifeline Order*, the Commission has acted to address waste, fraud, and abuse in the Lifeline program and improved program administration and accountability.⁷ In this Fifth Report and Order, Memorandum Opinion and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (Order), the Commission eliminates the Lifeline Broadband Provider (LBP) designation category and the federal designation process for Lifeline Broadband Providers. The Commission also takes steps to strengthen the reliability and integrity of the Lifeline program's enrollment, recertification, reimbursement, and audit processes.

3. Pursuant to these objectives, the Commission adopts changes to its Lifeline program rules. First, to restore the traditional categories of eligible telecommunications carriers (ETC) and ETC obligations, the Commission eliminates the Lifeline Broadband Provider ETC category and the federal designation process for Lifeline Broadband Providers. Accordingly, the Commission eliminates section 54.201(j), which precluded states from designating Lifeline Broadband Providers. In addition, the Commission also eliminates section 54.202(d)(1-3), 54.202(e), and 54.205(c) of its rules.

4. To further improve the integrity of the Lifeline enrollment process, this Order prohibits ETCs from offering or paying commissions to enrollment representatives or their direct supervisors based

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Bridging the Digital Divide for Low-Income Consumers, et. al.*, Fourth Report and Order, Order on Reconsideration, Second Report and Order, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10495-10515 paras. 53-118 (2017) (*2017 Lifeline Notice*).

³ See 5 U.S.C. § 604.

⁴ See 47 U.S.C. § 254 *passim*.

⁵ See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

⁶ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-34 (1997) (*Universal Service First Report and Order*).

⁷ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*2012 Lifeline Order*); *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, (2015) (*2015 Lifeline Further Notice*); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Order*).

on the number of Lifeline applications submitted or enrollments approved. Additionally, to prevent waste, fraud, and abuse in the Lifeline program, the Commission further requires all ETC enrollment representatives who provide information to USAC or a state entity administering a state Lifeline program during the Lifeline enrollment process to register with USAC. The Commission amends its rules to require each ETC enrollment representative to register with USAC and obtain a unique registration number prior to accessing the NLAD or National Verifier. Ultimately, ETCs are responsible for ensuring that their enrollment representatives complete this registration process.

5. The Commission also amends its rules regarding the recordation of information related to the Independent Economic Household (IEH) Worksheet. The Commission finds that amending section 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses. ETCs shall not record an IEH worksheet in NLAD in any other situation. Additionally, to further combat waste, fraud, and abuse in the Lifeline program, the Commission adds a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. The revised rule prohibits ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification.

6. The Commission also modifies § 54.407 to clarify that the number of eligible subscribers that an ETC may claim for reimbursement must be the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the NLAD. In the case of NLAD opt-out states (California, Oregon, and Texas), ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning the subscribers that can be claimed. The Commission amends § 54.410(f)(2)(iii) to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another eligibility database. This rule change creates a more verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. The Commission also amends its rules to accommodate this process in the National Verifier. If the ETC is unable to re-certify the subscriber's eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in section 54.405(e)(4).

7. The Commission also amends its recertification rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another one. The Commission also modifies § 54.420(a), regarding biennial audits by removing the \$5 million reimbursement threshold and implementing a purely risk-based model.

8. The Commission acts on several Petitions for Reconsideration and requests to clarify ETCs' obligations under the Lifeline program. The Commission dismisses as moot USTelecom's request that the Commission extend the effective date for the requirement to offer Lifeline-supported broadband Internet access service and apply to non-Lifeline Broadband Providers a clarification extended to Lifeline Broadband Providers regarding an advertising requirement. The Commission also denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline standalone voice service. The Commission denies the Petition for Reconsideration of the National Association of State Utility Consumer Advocates, in which the petitioners objected to the Commission's previous decision not to require ETCs to provide back-up power payment arrangements or

other options to Lifeline consumers. The Commission also clarifies when an ETC may seek reimbursement for subscribers who are within the cure period that is triggered by the non-usage rules. The Commission also grants requests for reconsideration of the Commission's rolling recertification requirement filed by USTelecom, NTCA and WCA (jointly), and GCI and revises § 54.410(f)(1) by removing the rolling recertification requirement and reinstating the requirement that recertifications be completed annually. Furthermore, the Commission also denies a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunication Regulatory Board to address duplicate Lifeline subscribers as defined by that board.

B. Summary of Significant Issues Raised by Public Comments to the IRFA

9. The Commission received no comments in direct response to the IRFA contained in the *2017 Lifeline Notice*.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

10. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.⁸

11. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules May Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹¹ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹²

13. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹³ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an

⁸ 5 U.S.C. § 604(a)(3).

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ 5 U.S.C. § 601(6).

¹¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹² See 15 U.S.C. § 632.

¹³ See 5 U.S.C. § 601(3)-(6).

independent business having fewer than 500 employees.¹⁴ These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.¹⁵

14. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁶ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁷

15. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁸ U.S. Census Bureau data from the 2012 Census of Governments¹⁹ indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number there were 37,132 general purpose governments (county,²¹ municipal, and town or township²²) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts²³ and special

¹⁴ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

¹⁵ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

¹⁶ 5 U.S.C. § 601(4).

¹⁷ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <https://nccs.urban.org/project/national-taxonomy-exempt-entities-ntee-codes> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results.”

¹⁸ 5 U.S.C. § 601(5).

¹⁹ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description, Census of Governments, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

²¹ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

²² See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²³ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

districts²⁴) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.²⁵ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁶

1. Wireline Providers

16. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁷ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁸ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.²⁹ Of this total, an estimated 1,006 have 1,500 or fewer employees.³⁰ Thus using the SBA’s size standard the majority of Incumbent LECs can be considered small entities.

17. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.³¹ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³² Based on these data, the Commission

²⁴ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

²⁵ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²⁶ *Id.*

²⁷ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁸ *Id.*

²⁹ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³⁰ *Id.*

³¹ 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³² <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?>

concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³³ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.³⁴ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.³⁵ Also, 72 carriers have reported that they are Other Local Service Providers.³⁶ Of this total, 70 have 1,500 or fewer employees.³⁷ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

18. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for IXCs is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁸ Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³⁹ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴⁰ Of this total, an estimated 317 have 1,500 or fewer employees.⁴¹ Consequently, the Commission estimates that the majority of interexchange service providers are small entities

19. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴² Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴³ Thus, under this size standard, the majority of firms in this industry can be considered small. According to Commission data, 33 carriers have reported that they are engaged in the provision of

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[pid=ECN_2012_US_51SSSZ5&prodType=table.](#)

³³ See *Trends in Telephone Service*, at tbl. 5.3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³⁹ [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table)

⁴⁰ See *Trends in Telephone Service*, at tbl. 5.3.

⁴¹ *Id.*

⁴² 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁴³ [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table)

operator services.⁴⁴ Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that the majority of OSPs are small entities.

20. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁴⁶ Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.⁴⁸ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁴⁹ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵⁰ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

21. *Toll Resellers.* The SBA has not developed a small business size standard specifically for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.⁵¹ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁵² Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ The 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁴ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are

⁴⁴ *Trends in Telephone Service*, tbl. 5.3.

⁴⁵ *Id.*

⁴⁶ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁴⁷ 13 CFR § 121.201, NAICS code 517911.

⁴⁸ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

⁴⁹ *See Trends in Telephone Service*, at Table 5.3.

⁵⁰ *See id.*

⁵¹ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁵² 13 CFR § 121.201, NAICS code 517911.

⁵³ *Id.*

⁵⁴

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

engaged in the provision of toll resale services.⁵⁵ Of this total, an estimated 857 have 1,500 or fewer employees.⁵⁶ Consequently, the Commission estimates that the majority of toll resellers are small entities.

2. Wireless Carriers and Service Providers

22. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁵⁷ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁸ Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.⁵⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁶⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.⁶¹ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁶² Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁶³ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

23. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁶⁴ The SBA has approved these definitions.⁶⁵ The

⁵⁵ *Trends in Telephone Service*, at tbl. 5.3.

⁵⁶ *Id.*

⁵⁷ NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

⁵⁸ 13 CFR § 121.201, NAICS code 517210.

⁵⁹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

⁶⁰ See U.S. Census Bureau, American Factfinder, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table (last visited Oct. 24, 2017). Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶¹ See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁶² See *Trends in Telephone Service*, at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁶³ See *id.*

⁶⁴ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

24. *Satellite Telecommunications Providers.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶⁶ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁶⁷ For this category, 2012 Census Bureau data show that there were a total of 333 firms that operated for the entire year.⁶⁸ Of this total, 299 firms had annual receipts of less than \$25 million.⁶⁹ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

25. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁷⁰

26. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷¹ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁷² The SBA has approved this definition.⁷³ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁷⁴ Fifty-seven companies claiming small business status won 440 licenses.⁷⁵ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁷⁶ One hundred thirty-two companies claiming small business status purchased 3,724 licenses.

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⁶⁵ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁶⁶ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/naics/2007/def/ND517410.HTM>.

⁶⁷ 13 CFR § 121.201, NAICS code 517410.

⁶⁸ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

⁶⁹ *Id.*

⁷⁰ See U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”, <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210> (last visited Oct. 24, 2017).

⁷¹ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

⁷² *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁷³ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Dec. 2, 1998).

⁷⁴ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁷⁵ See *id.*

⁷⁶ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁷

27. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.⁷⁸ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁷⁹ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

28. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)⁸⁰ and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.⁸¹ Census Bureau data shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.⁸² Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁸³ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁸⁴ Therefore, more than half of these entities can be considered small.

29. *All Other Telecommunications.* This category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁸⁵ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁸⁶ For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁸⁷ Thus,

⁷⁷ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁷⁸ 2010 Trends Report at Table 5.3, page 5-5.

⁷⁹ *Id.*

⁸⁰ 13 CFR § 121.201, NAICS code 517210.

⁸¹ *Id.*

⁸² *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁸³ 2010 Trends in Telephone Service, tbl. Report at Table 5.3, page 5-5.

⁸⁴ *Id.*

⁸⁵ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁶ 13 CFR § 121.201; NAICS Code 517919.

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https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

3. Internet Service Providers

30. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.⁸⁸ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁸⁹ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.⁹⁰ Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁹¹ Consequently, under this size standard the majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

31. A number of our rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of those rule changes, we have determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirements. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. We have noted the applicable rule changes below impacting small entities.

32. *Compliance burdens.* The rules we implement impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

33. *Improving Program Integrity in Program Enrollment and Recertification.* The Commission modifies its rules to improve the integrity within the Lifeline program. The Order prohibits ETCs from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of Lifeline applications submitted or enrollments approved and requires that enrollment representatives register with USAC. The Order further modifies the rules regarding the recertification process, and now requires Lifeline subscribers to provide supporting documentation to prove eligibility when the subscriber’s continued eligibility cannot be verified in a state or federal eligibility database. While these changes will require ETCs to undertake additional steps to ensure compliance with the new rules, the rules will strengthen the Lifeline program by removing avenues for fraud.

34. *Limiting the Recordation of IEH Worksheets.* The Commission modifies its rules to limit the recording of an IEH worksheet in USAC’s Lifeline systems only to situations where the Lifeline subscriber resides at the same address as another Lifeline subscriber. Requiring ETCs to record the

⁸⁸ See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?_af=ECN_2012_US_SSSZ2&prodType=table.

collection of an IEH worksheet only where the Lifeline subscriber resides at a duplicate address decreases the burden on the carrier by reducing the situations in which an ETC must record the worksheet.

35. *Modifications to the Biennial Audit Rule.* The Commission modifies its rules to require that a risk-based approach be used to identify ETCs that must complete independent audits pursuant to section 54.420(a) of the Commission's rules rather the level of USF reimbursements. Under this new standard, which replaces the outdated threshold that limited third-party biennial audits to those providers that receive at least \$5 million in Lifeline reimbursements, ETCs that receive less than \$5 million in Lifeline reimbursements may now be subject to an independent audit pursuant to this rule.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁹²

37. This rulemaking could impose minimal additional burdens on small entities. In this Order, the Commission modifies certain Lifeline rules to target funding to areas where it is most needed. In developing these rules, the Commission worked to ensure the burdens associated with implementing these rules would be minimized for all service providers, including small entities. In taking this action, the Commission considered potential impacts on service providers, including small entities. We considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities. The Commission's decision to amend its rules to permit an ETC to record an IEH worksheet in NLAD only in situations where a consumer shares an address with another Lifeline subscriber allows ETCs, including small entities, to continue collecting worksheets from subscribers at the enrollment process. The Commission considered the comments urging for no change to that process and found no compelling reason to prohibit this practice. By not disturbing this practice of collecting worksheets at the outset, the Commission minimized the burden on small entities. Given the narrow and targeted scope of the changes being made, no alternative readily presents itself to limit the burdens on small business or organizations. The identified increase in burden is minimal and outweighed by the advantages in combating waste, fraud, and abuse in the program.

G. Report to Congress:

38. The Commission will send a copy of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁹³ In addition, the Commission will send a copy of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, and the FRFA (or summaries thereof) will also be published in the Federal Register.⁹⁴

⁹² 5 U.S.C. § 603(c)(1)-(c)(4).

⁹³ See 5 U.S.C. § 801(a)(1)(A).

⁹⁴ See 5 U.S.C. § 604(b).

APPENDIX D**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on the first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.⁴ The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T.⁵ On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁶ The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the universal service fund (USF or Fund) for the provision of such discounts.

3. In the *2017 Lifeline Order and Notice*, the Commission sought comment on a number of proposals that were intended to improve the integrity of the program. Many of those proposals were adopted in the *Fifth Report and Order*. Building on those efforts, in this Notice of Proposed Rulemaking, the Commission seeks comment on revising the goals of the Lifeline program and how to measure the program's achievements with respect to broadband adoption. The Commission also seeks comment on its proposal to require ETCs, USAC, and the National Verifier, as appropriate, to recertify each Lifeline subscriber's eligibility once every 12 months, as measured from the subscriber's service initiation date. The Commission also proposes a number of changes designed to improve integrity of the Lifeline program.

B. Legal Basis

4. The legal basis for the Notice of Proposed Rulemaking is contained in sections 1 through 4, 201-205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, and 403.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ See 47 U.S.C. § 254.

⁵ See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-34 (1997) (*First Universal Service Report and Order*).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹¹ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹²

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹³ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁴ These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.¹⁵

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁶ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁷

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(6).

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁰ See 15 U.S.C. § 632.

¹¹ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

¹² 5 U.S.C. § 601(4).

¹³ See 5 U.S.C. § 601(3)-(6).

¹⁴ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

¹⁵ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

¹⁶ 5 U.S.C. § 601(4).

¹⁷ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of Aug. 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months

(continued...)

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁸ U.S. Census Bureau data from the 2012 Census of Governments¹⁹ indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number there were 37,132 general purpose governments (county²¹, municipal and town or township²²) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts²³ and special districts²⁴) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.²⁵ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁶

(Continued from previous page) _____
of the Aug. 2016 data release date. See <https://nccs.urban.org/project/national-taxonomy-exempt-entities-ntee-codes> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results.”

¹⁸ 5 U.S.C. § 601(5).

¹⁹ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description, Census of Governments, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

²¹ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

²² See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²³ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²⁴ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. [The U.S. Census Bureau data did not provide a population breakout for special district governments.](#)

²⁵ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²⁶ *Id.*

1. Wireline Providers

9. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁷ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁸ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.²⁹ Of this total, an estimated 1,006 have 1,500 or fewer employees.³⁰ Thus using the SBA's size standard the majority of Incumbent LECs can be considered small entities.

10. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees.³¹ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³² Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³³ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.³⁴ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.³⁵ Also, 72 carriers have reported that they are Other Local Service Providers.³⁶ Of this total, 70 have 1,500 or fewer employees.³⁷ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange

²⁷ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁸ *Id.*

²⁹ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³⁰ *Id.*

³¹ 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³²

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³³ See *Trends in Telephone Service*, at tbl. 5.3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

11. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small *business* size standard specifically for providers of interexchange services. The appropriate category for IXCs is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁸ Census Bureau data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³⁹ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴⁰ Of this total, an estimated 317 have 1,500 or fewer employees.⁴¹ Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴² Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴³ Thus, under this size standard, the majority of firms in this industry can be considered small. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services.⁴⁴ Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that the majority of OSPs are small entities.

13. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁴⁶ Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that

³⁸ 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³⁹

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴⁰ See *Trends in Telephone Service*, at tbl. 5.3.

⁴¹ *Id.*

⁴² 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁴³ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁴ *Trends in Telephone Service*, tbl. 5.3.

⁴⁵ *Id.*

⁴⁶ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁴⁷ 13 CFR § 121.201, NAICS code 517911.

number, all operated with fewer than 1,000 employees.⁴⁸ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁴⁹ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵⁰ Consequently, the Commission estimates that the majority of local resellers are small entities.

14. *Toll Resellers.* The SBA has not developed a small business size standard specifically for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.⁵¹ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁵² Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁴ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵⁵ Of this total, an estimated 857 have 1,500 or fewer employees.⁵⁶ Consequently, the Commission estimates that the majority of toll resellers are small entities.

2. Wireless Carriers and Service Providers

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁵⁷ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁸ 2012 Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁵⁹ Of this total, 955 firms had employment of 999 or fewer employees

⁴⁸ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517911.

⁴⁹ See *Trends in Telephone Service*, at Table 5.3.

⁵⁰ See *id.*

⁵¹ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁵² 13 CFR § 121.201, NAICS code 517911.

⁵³ *Id.*

⁵⁴

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁵⁵ *Trends in Telephone Service*, at tbl. 5.3.

⁵⁶ *Id.*

⁵⁷ NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

⁵⁸ 13 CFR § 121.201, NAICS code 517210.

⁵⁹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

and 12 had employment of 1000 employees or more.⁶⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.⁶¹ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁶² Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁶³ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. *Wireless Communications Services.* This service can be used for fixed, *mobile*, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁶⁴ The SBA has approved these definitions.⁶⁵ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

17. *Satellite Telecommunications Providers.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶⁶ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁶⁷ For this category, 2012 Census Bureau data show that there were a total of 333 firms that operated for the entire year.⁶⁸ Of this total, 299 firms had annual receipts of less than \$25 million.⁶⁹ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

⁶⁰ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶¹ See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁶² See *Trends in Telephone Service*, at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁶³ See *id.*

⁶⁴ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁶⁵ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁶⁶ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

⁶⁷ 13 CFR § 121.201; NAICS code 517410.

⁶⁸ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTpe=table.

⁶⁹ *Id.*

18. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁷⁰

19. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷¹ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁷² The SBA has approved this definition.⁷³ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁷⁴ Fifty-seven companies claiming small business status won 440 licenses.⁷⁵ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁷⁶ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁷

20. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.⁷⁸ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁷⁹ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)⁸⁰ and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.⁸¹ Census

⁷⁰ See U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”, <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210> (last visited Oct. 24, 2017).

⁷¹ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

⁷² *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁷³ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

⁷⁴ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁷⁵ See *id.*

⁷⁶ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

⁷⁷ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁷⁸ *2010 Trends Report* at Table 5.3, page 5-5.

⁷⁹ *Id.*

⁸⁰ 13 CFR § 121.201; NAICS code 517210.

⁸¹ *Id.*

Bureau for 2012 data show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.⁸² Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁸³ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁸⁴ Therefore, more than half of these entities can be considered small.

22. *All Other Telecommunications.* This category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁸⁵ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁸⁶ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁸⁷ Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

3. Internet Service Providers

23. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.⁸⁸ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁸⁹ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.⁹⁰ Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000

⁸² *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁸³ *Trends in Telephone Service*, tbl. 5.3.

⁸⁴ *Id.*

⁸⁵ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁶ 13 CFR § 121.201; NAICS Code 517919.

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https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

⁸⁸ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁸⁹ *Id.*

⁹⁰ *Id.*

employees.⁹¹ Consequently, under this size standard the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. In this Further Notice, the Commission seeks comment on modifying its goals for the Lifeline and on proposed reforms of the program that are intended to improve the integrity of the program by further eliminating waste, fraud, and abuse in the program.

25. *Increased Broadband Adoption as a New Program Goal.* In this Further Notice, the Commission seeks comment on adding a new goal to the program: increased broadband adoption among consumers who otherwise, without a Lifeline benefit, would not subscribe to broadband. The Commission seeks comment on its authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not subscribe to broadband. The Commission also seeks comment on the appropriate method for measuring broadband adoption among consumers who otherwise would not subscribe to broadband. The Commission asks which data sources could help inform the Commission's measurement of this goal and asks whether there are additional questions that can be asked of Lifeline applicants during the enrollment process regarding how the program has impacted their broadband adoption. Should the Commission also add questions to determine whether Lifeline is effectively reaching specific demographics, like veterans or households with children? The Commission seeks comment on what other methods can be used to determine the impact of the Lifeline benefit on broadband adoption, and whether the Commission should rely on Commission reports or other data sources. Furthermore, for the purposes of this goal, the Commission asks how it should identify low-income consumers or areas if other Commission reports or data sources are used. The Commission also asks how it should define broadband and whether its evaluation of this goal consider fixed and mobile broadband differently. The Commission also asks whether this goal should also measure adoption of voice service from consumers who would not otherwise have it. The Commission also proposes to examine Lifeline's impact across several categories of consumers, from those that value broadband so highly that they would purchase it even without a Lifeline benefit, to those that may currently use a Lifeline-supported broadband Internet access service but would lose access to that service or only purchase broadband intermittently without Lifeline support. The Commission also wishes to examine those that do not subscribe to any broadband Internet access service at all. The Commission asks how it can identify, measure, and analyze adoption among each of these groups, and how would it inform whether the Lifeline program is meeting the goal of increasing broadband adoption? The Commission seeks comment on any additional criteria for us to consider as we evaluate the program's impact on broadband adoption among consumers.

26. *Upload Internal Customer Accounts and Eligibility Proof Number and Type.* The Commission proposes to amend section 54.404(b) of its rules to require ETCs to upload their internal customer account numbers into the NLAD when enrolling or rectifying subscribers in order to help facilitate the examination of internal data to determine if improper payments were made. The Commission also proposes amending sections 54.404(b) and 54.410(d) to require ETCs and the National Verifier to collect and record the identification number or card number indicated on the eligibility documentation (e.g., the SNAP card number or Medicaid card number) and the type of eligibility proof used by a subscriber to demonstrate eligibility for the Lifeline program. This proposal would not apply where a subscriber's eligibility is verified through an automated database. The Commission seeks comment on this proposal.

27. *Demonstrating Compliance with Usage Requirements.* The Commission also seeks comment on ways to ensure the accuracy of ETCs' claims that subscribers are using their broadband

⁹¹http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?%20pid=ECN_2012_US_SSSZ2&prodType=table.

Internet access service under the non-usage rule. We ask whether it would be possible for an ETC to pre-install an app on a subscriber's phone that would "use" data without any action by the user? Could an ETC fabricate usage in order to continue claiming support for a Lifeline subscriber who is no longer using the service? The Commission invites comment on whether it could require subscribers to use an app to confirm usage. The Commission also seeks comment on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage.

28. The Commission also seeks comment on amending section 54.417 of the Commission's rules to clarify an ETC's obligation to maintain records that document compliance with the usage requirement. The current rule requires ETCs to "maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. While this rule already applies to the usage requirement in sections 54.405(e)(3) and 4.407(c) of the Commission's rules, we seek comment on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended rule 54.417 to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is "undertaken by the subscriber," and not by the ETC, as the Commission's rules require? What are the costs and benefits of specially requiring ETCs to maintain detailed usage records, which could be examined to show any trends that reveal indications of potential usage fabrication (for example, an account that only used data once every 30 days, at 2:00 am)? Should such usage data be maintained for the same general timeframe as other compliance documentation under section 54.417?

29. *De-enrollment Process.* The Commission seeks comment on amending section 54.405(e)(1) of its rules to clarify ETCs' obligations to act promptly to notify subscribers when the ETC has reason to believe that the subscriber is not eligible for the Lifeline program. Currently, the rule provides the subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate his or her eligibility. However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period. An ETC that unreasonably delays sending the 30-day notice would violate the existing rule, but we also seek comment on implementing a firm deadline to avoid future confusion. The Commission seeks comment on whether it should amend section 54.405(e)(1) to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe that the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day-de-enrollment notice be sufficient? The Commission also seeks comment on amending section 54.405 of its rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Universal Service Fund. Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from NLAD pursuant to an ETC's request or a program integrity review, under its authority as administrator of the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews or other situations, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

30. *Distribution of Free Handsets.* The Commission also seeks further comment on the practice of in-person distribution of free handsets. Specifically, the Commission seeks comment on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program. The Commission seeks comment on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in person at enrollment. How prevalent is the in-person distribution of free handsets today and is this practice primarily associated with free-to-the-end-user Lifeline plans? Would this restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline and does the promise of an immediate free phone along with a free service

provide improper incentives to potential subscribers? The Commission asks whether it has the statutory authority to prohibit ETCs from distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs. Does the longstanding program restriction on support for equipment used for the supported service justify a new requirement that all Lifeline subscribers must pay a fee for the handsets used to provide the supported service? The Commission seeks comment on whether important changes to NLAD and the roll-out of National Verifier have reduced the opportunities for fraud that were associated with the distribution of free handsets. The Commission seeks comment on other alternatives, such as delaying the distribution of free handsets or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee. Would those alternatives help eliminate fraud within the program? What would be the impact on program participation if Lifeline subscribers had to pay a fee in exchange for a handset? Would a fee create significant barriers to participating in the Lifeline program? If the Commission were to implement this requirement, how much should the fee be for a handset? The Commission seeks comment on the impact of limiting distribution of handsets would have on other activities, such as in-person training on handset use. The Commission also asks if it were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers, and how could the Commission monitor and enforce an ETC's compliance with that requirement. The Commission also notes that it recently sought comment on whether it should impose a maximum discount level for Lifeline services, which would require customers to pay a portion of the costs of the supported service. Would requiring that carriers charge Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

31. *Certifying Privacy Protection Training Efforts.* The Commission seeks comment on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees, agents, and representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards in how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program. The Commission has not, however, specifically required ETCs and state agencies to train their personnel in appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees, agents, and representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of that data. In implementing a certification requirement for entities with NLAD and National Verifier access, the Commission seeks comment on the sufficiency of an ETC's customer proprietary network information (CPNI) certification to certify the effective training of their staff accessing these systems. The Commission also seeks comment on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? This item also seeks comment on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, agents, representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier. We also seek comment on the availability of existing privacy training resources for state agencies that have access to personal data in NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ? The Commission also seeks comment on how a privacy training and certification requirement should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct their own? The Commission proposes requiring ETCs and state agencies to

certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees, agents, and representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and we seek comment on this approach. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, the Commission seeks comment on a proposal to require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. The Commission seeks comment on existing practices regarding employee background investigations and the burdens associated with a requirement to regularly provide such information to USAC.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁹²

33. The Further Notice seeks comment on several policies that would revise the program's goals and promote the availability of modern services for low-income families, and also reduce waste, fraud, and abuse in the program. As explained below, several of the policies would increase the economic burdens on small entities, and certain changes would lessen the economic impact on small entities. Requiring ETCs to upload its internal customer account numbers and to provide a subscriber's eligibility proof number and type are some of the measures proposed that are intended to help eliminate waste, fraud, and abuse in the Lifeline program. Moreover, the proposal to codify the de-enrollment obligations help ensure that ETCs do not unreasonably delay in sending out 30-day notices to subscribers that may no longer be eligible for Lifeline. In those instances in which a policy would increase burdens on small entities, we have determined that the benefits from such changes outweigh the increased burdens on small entities because those proposed changes would facilitate the Lifeline program's goal of supporting affordable, high-speed Internet access for low-income Americans or would minimize waste, fraud, and abuse in the program. The Commission invites comments on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

34. None.

⁹² 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197.

The Lifeline program is an important tool in the Commission's efforts to bridge the digital divide for low-income consumers. But there's no dispute that it has been in trouble for the better part of a decade. Simply put, it's been plagued by waste, fraud, and abuse.

A few data points. In 2011, the Universal Service Administrative Company discovered 269,000 duplicate subscribers enrolled in the program—with another 1.28 million discovered *after* the roll-out of the National Lifeline Accountability Database. In 2014, the owner of Icon Telecom pleaded guilty to money laundering in connection with the Lifeline program. In 2016, the Hawaii Public Utilities Commission discovered that Blue Jay Wireless had enrolled more Tribal households in the Hawaiian Home Lands than there were total households. That same year, our Office of the Inspector General found that hundreds of Total Call Mobile field agents engaged in fraudulent practices to enroll customers. In 2017, a Lifeline field agent pleaded guilty to wire fraud for enrolling non-existent customers. Also that year, the Government Accountability Office reported that it could not confirm the eligibility of 1.2 million Lifeline subscribers—36% of those it surveyed. In 2018, the Commission found that the American Broadband & Telecommunications Company apparently sought and received support for tens of thousands of ineligible subscribers. And in 2019, an Oregon Public Utility Commission investigation led to the discovery that Sprint had received at least tens of millions of dollars in Lifeline funding for subscribers that were not using the service.

Given these and many other examples, it isn't a surprise that earlier this year our Office of the Inspector General confirmed that "[f]raud remains a serious problem for the Lifeline program." Indeed, the Improper Payment Rate for Lifeline in 2018—18.5%—was the highest of any program in the Universal Service Fund. This is not a rounding error. This represents hundreds of millions of dollars each year in potentially wasted funds. And it means that hundreds of millions of dollars each year do not serve American citizens in need of the program's assistance. Countenancing this state of affairs isn't compassion. It's an abdication of duty.

In light of Lifeline's troubled past, instituting common sense reforms to combat waste, fraud, and abuse is critical to its future. And that's just what this item does. It prevents dead people from being enrolled in the program. It cracks down on subscribers getting duplicate benefits. It ends unauthorized access and manipulation of the National Lifeline Accountability Database and the National Verifier. It doubles down on risk-based auditing. And it empowers state commissions to be cops on the beat—a role Congress has expressly given them. Nobody can honestly dispute the wisdom of these measures.

Except, of course, some do. It's unfortunate that some feel obligated to oppose such good government measures for petty political reasons. And when they don't engage with the substance of most of the reforms in this item, but instead decide to focus on name-calling, it makes clear what's really going on. But no one should be fooled. Voting against these straightforward reforms to reduce waste, fraud, and abuse is a disservice to the elderly, veterans, victims of domestic violence, and LGBTQ youth who could benefit from the program. It only serves the unscrupulous companies that have been ripping off the American people. I'm glad that a majority of Commissioners favors doing what could have been done and should have been done a long, long time ago—standing up to these bad actors rather than standing up for them.

For their outstanding work on this item, I'd like to thank Micah Caldwell, Jessica Campbell, Rashann Duvall, Nathan Eagan, Jodie Griffin, Trent Harkrader, Jesse Jachman, Allison Jones, Kris Monteith, Nicholas Page, Ryan Palmer, and Eric Wu of the Wireline Competition Bureau; Malena Barzilai, Mike Carlson, Tom Johnson, Rick Mallen, and Linda Oliver of the Office of General Counsel;

Octavian Carare, Giulia McHenry, Eric Ralph, and Emily Talaga of the Office of Economics and Analytics; Pamela Gallant, Jeffrey Gee, Rosemary Harold, Kalun Lee, and David Sobotkin of the Enforcement Bureau; Thomas Buckley, Daniel Daly, and Mark Stephens of the Office of Managing Director; and Maura McGowan and Sanford Williams of the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING IN PART, CONCURRING IN PART**

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197.

Over nearly four decades, the Lifeline program has provided millions of Americans with the opportunity to access a whole range of services through communications. This program has made it possible for low-income consumers to reach out in crisis; seek employment; secure healthcare; and interact with local, state, and federal government. But in the last few years the Federal Communications Commission has failed to recognize that Lifeline is about opportunity. That's regrettable because in its place this agency has consistently offered cruelty, harming a program whose primary purpose is to lend a hand and help.

To be clear, this means cruelty to as many as 2 million elderly Americans who rely on this program for basic connectivity. It means cruelty to the roughly 1.3 million veterans who have served our country and rely on Lifeline service to stay in touch. It means cruelty to those recovering from disaster, like the half a million residents of Puerto Rico who are still rebuilding their lives and communities in the wake of Hurricane Maria and rely on this program to communicate. It means cruelty to the more than 20,000 women, men and children across the country who call a domestic violence hotline every day because many of the organizations behind those hotlines depend on Lifeline to help protect those who call from future harm. And it means cruelty to the 650,000 homeless youth who identify as lesbian, gay, bisexual, or transgender and may rely on discounted access to wireless service to stay safe.

To understand how we got here, a bit of history is required. The Lifeline program got its start in 1985 during the Reagan Administration, when telephone calls required a cord and a jack in the wall. Over time, the FCC updated the program. This included, for instance, during the Bush Administration following Hurricane Katrina, when the FCC made wireless service eligible for support from Lifeline. Later, to curb the efforts of some providers seeking to exploit the program, the FCC put in place new program controls. During the Obama Administration this included requiring new auditing procedures, creating a National Lifeline Accountability Database, and developing a National Verifier designed to take the eligibility determination out of the hands of carriers. These were important measures to reduce waste and abuse. At the same time, the FCC refocused the program on internet access, recognizing that dial tone in the digital age is broadband.

These updates were smart. They were modern. They reflected a bipartisan consensus that mending the program was important but so was ensuring it had a future. After all, the Lifeline program has been an important part of connecting the least among us for almost forty years.

But in 2017, the FCC abruptly changed course. Right out of the gate it cut the Lifeline reforms designed to refocus the program on broadband, rescinding the ability of a bunch of companies seeking to offer internet access through the program. Next, it proposed slashing the program by as much as 70 percent. On top of this, it took a cruel swipe at the program on Tribal Lands, where it cut off providers and acted like up is down by suggesting that this would increase access to communications in our least connected communities.

Thankfully, a court saw through this dishonesty and vacated the FCC's effort to dismantle the program on Tribal Lands. It found that the agency acted in an arbitrary and capricious fashion by "not providing a reasoned explanation for its change of policy that is supported by record evidence." At the same time, the FCC's proposal to gut the program has been panned by everyone from the AARP to the American Association of People with Disabilities to the National Network to End Domestic Violence to the NAACP and the National Grange.

This brings us to the present and the decision before us today.

I believe the cruelty that has informed the FCC's approach to Lifeline is unacceptable. The desire to demonize those who rely on it fails to recognize the humanity of those who count on this program, including the elderly, veterans, those recovering from disaster, those suffering from domestic violence, and homeless youth. That is why I called for the FCC to shut down this proceeding and start over. Because we do not, I dissent.

In addition, I dissent because the missteps this decision makes with respect to the future of this program are problematic. For starters, the effort to put eligible telecommunications carrier designation for Lifeline with state public service commissions grants those closer to service with an important role. But it doesn't clearly square with the FCC's decision to reclassify broadband and roll back net neutrality. It was, after all, this agency that tried to take authority out of the states when it pronounced broadband an information service. Here the FCC tries to jump over this logic in order to determine that states have full authority over Lifeline designations. How this works when it comes to standalone broadband is hard to follow. That's because the relevant statutory language in Section 214 regarding eligible telecommunications carriers describes them as common carriers, which this agency now understands to provide telecommunications services and not information services. This is a legal quagmire that is unfortunate and I fear it means even greater uncertainty for Lifeline in the future.

This decision also requires that eligible telecommunications carriers offering Lifeline service register the personally identifiable information of their workforce in a new database. That means we will entrust the Universal Service Administrative Company with holding information about employees from companies providing Lifeline service that range from names to dates of birth to residential addresses to even social security numbers. This presents an unnecessary risk for data breach. While an effort to increase oversight of those signing up subscribers has clear merit, this is a mess in the making. We could have pursued this objective while also minimizing the sensitive data required to ensure its success. Because we do not, I dissent.

I further dissent because the rulemaking appended to this decision adds to the uncertainty hanging over this program—and more importantly, the people who count on it.

To this end, the rulemaking seeks comment on prohibiting Lifeline providers from offering handsets to consumers at no cost. This makes no sense because the Lifeline program does not pay for handsets. Instead, it provides an offset against the cost of service. But by adding to the restrictions on this program we would decrease access to the service for those who need it most.

Next, this rulemaking seeks comment on a new programmatic goal: increasing broadband adoption for consumers “who without a Lifeline benefit, would not subscribe to broadband.” To do this, the agency suggests surveying Lifeline recipients—all of who have already been means-tested for eligibility—whether they would be able to afford service without Lifeline. This does not add up, unless the real goal is to further restrict participation in the program. So let's be honest about what is really going on because this feels like a backhanded effort to keep alive the notion that broadband is not truly necessary for a fair shot in today's economy.

Moreover, this rulemaking comes on the heels of a two-year effort by the agency to set up a National Verifier and then only very recently admit that to do so fairly requires an application programming interface. In the meantime, this important effort to prevent waste and abuse in the program has been waylaid by the fact that it has serious gaps in the databases it uses to determine eligibility. In fact, these gaps are so substantial that state public service commissions in Georgia, Nebraska, Connecticut, Vermont, and New York have been pleading with the agency to fix the verifier and get it right. Until we do, this system risks pushing away applicants who are otherwise eligible and hanging up on those who have a legal right to access this program.

At this risk of being technocratic, I do support several discrete aspects of today's decision. For example, I believe that adopting a regime that puts a premium on risk-based auditing, as we do here, is a smart move. I also believe eliminating commission-based incentives for sales agents is the right thing to do because it will provide a structural guard against waste and abuse. Moreover, efforts to terminate

accounts for those who are deceased make clear sense. But because these thoughtful changes are surrounded by so much that is misguided, I concur.

In other respects I dissent because instead of taking this four-decade-old program and modernizing it, our approach has been to diminish it—with cruel disregard for those who need it most.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
CONCURRING IN PART AND DISSENTING IN PART**

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197.

A few short months ago, I stepped through the doors of Miriam’s Kitchen, a social services organization working to end chronic homelessness here in Washington, D.C. This organization is located just blocks away from pricey restaurants, a private university and elite law firms. The people who visit this organization’s facility look to gain access to warmth in the winter, food to nourish their bodies, and some genuine interaction from smiling employees looking to lend a helping hand.

I sat down at a folding table alongside six people experiencing homelessness as they shared with me that the only way they can access the internet or make a call through a device that they themselves own is through the Lifeline program. It was there that I heard what it actually means for them to have a phone: one person uses it to speak directly with her doctor and arranges appointments over the phone; another needed it for job applications; and virtually all of them spoke of the isolation of homelessness, and how a phone is essential to connecting with family and friends.

For those who were Lifeline subscribers, they were grateful that the government steps in to ensure people who are in unforeseen and unfortunate circumstances have access to communications services. That gratitude was even expressed while they identified significant flaws with our program such as their wait time to obtain a Lifeline phone, their troubles with customer service representatives, or even difficulties figuring out how best to ration their precious and limited data.

The crux of our decision today is this: do we aim to strengthen the underutilized Lifeline program and build up some of our most marginalized citizens; or do we aim to deflate the program and further burden its recipients? I know which side I’m on.

If we truly seek to increase broadband adoption, then I do not believe the elimination of the Lifeline Broadband Provider designation would assist in this process. The *2016 Lifeline Order* asserted the Commission’s authority to designate ETCs for the purpose of offering broadband internet service providers in the Lifeline program as a method to “unlock the Lifeline program to new innovative service providers and robust broadband offerings for the benefit of low-income consumers.”¹ Commenters pointed out in that *Order* that the streamlining of the process and the cutting of red tape lessens the burden on both small and large carriers, thus causing increased service provider participation.² There are approximately 40 companies with pending LBP designations, many of which have applied to provide service in several states with high rates of poverty. With our actions today, we will never find out how much carrier participation would increase, and how many people could have easier access to life-changing health services, jobs, and connections.

Additionally, I am deeply troubled by many toxic questions asked by the *FNPRM*. It seeks comments on whether the Commission should “ask Lifeline applicants whether they would be able to afford their Lifeline-supported service without the Lifeline discount,” and asserts that some consumers

¹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-197, and 10-97, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4044 para. 231 (2016) (*2016 Lifeline Order*).

² See *2016 Lifeline Order*, 31 FCC Rcd at 4047, para. 236 (citing comments by Cox Communications, the Benton Foundation, and the Telecommunications Board of Puerto Rico supporting a streamlined, national ETC designation process).

may be willing to “purchase some level of broadband service even in the absence of a Lifeline benefit” because they “may value broadband access so highly.” It goes on to ask questions about a fee in exchange for receiving a handset or device in-person at enrollment, and about program integrity recommendations as it relates to usage requirements.

To the best of my research, I don’t believe we’ve ever probed elderly Medicare recipients on how much they actually value their medical services; nor should we probe vulnerable, Lifeline recipients on how much they value their connectivity. These are government programs and services designed and targeted for the benefit of particular citizens, and frankly our chief concern should be exploring how to make sure that they are fully utilized. With regard to a fee, I heard firsthand from subscribers at the Larkin Street Youth Services center in San Francisco, California that they see the device alongside the voice and broadband service as inextricably linked. We shouldn’t even articulate the possibility of placing yet another barrier to participation in front of these communities. Regarding USAC check-ins and data use records, I stand opposed. These amount to unnecessary additional burdens on recipients, and in the case of data use records, a real risk of oversurveillance of low-income communities and communities of color.

Finally, I do believe that there are some common-sense measures in this item that prevent waste, fraud, and abuse and that is why I concur in part. As a former enforcement bureau official, I do believe that we have to preserve the integrity of this program such as triple checking that there are no ETC’s claiming and seeking reimbursement for deceased subscribers.

However, despite the efforts I agree with to save the integrity of this program, I find that it is packaged in a way that continues to create uncertainty in the lives of low-income people who are working to put clothing on their back and food on the table. Ultimately, I fear that much of today’s item will negatively impact the people I met at Miriam’s Kitchen and the Larkin Street Youth Services center.